

1 SB451 HFIN AM to AM

2 The Committee on Finance moves to amend the amendment of the Committee on  
3 Education on page one, line three, following the words "the following" and the colon, by striking  
4 out the remainder of the bill and inserting in lieu thereof the following:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE  
GOVERNOR, SECRETARY OF STATE AND ATTORNEY GENERAL;  
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,  
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

**ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.**

**§5-16-2. Definitions.**

1 The following words and phrases as used in this article, unless a different meaning is  
2 clearly indicated by the context, have the following meanings:

3 (1) "Agency" means the Public Employees Insurance Agency created by this article.

4 (2) "Director" means the Director of the Public Employees Insurance Agency created by  
5 this article.

6 (3) "Employee" means any person, including an elected officer, who works regularly full-  
7 time in the service of the State of West Virginia and, for the purpose of this article only, the term  
8 "employee" also means any person, including an elected officer, who works regularly full-time in  
9 the service of a county board of education; a public charter school established pursuant to §18-  
10 5G-1 et seq. of this code if the charter school includes in its approved charter application a  
11 determination to participate in the Public Employees Insurance program; a county, city, or town  
12 in the State; any separate corporation or instrumentality established by one or more counties,  
13 cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by  
14 counties, cities, or towns; any public corporation charged by law with the performance of a

15 governmental function and whose jurisdiction is coextensive with one or more counties, cities, or  
16 towns; any comprehensive community mental health center or ~~comprehensive~~ mental  
17 ~~retardation~~ intellectually and developmentally disabled facility established, operated, or licensed  
18 by the Secretary of Health and Human Resources pursuant to §27-2A-1 of this code and which  
19 is supported in part by state, county, or municipal funds; any person who works regularly full-time  
20 in the service of the Higher Education Policy Commission, the West Virginia Council for  
21 Community and Technical College Education or a governing board, as defined in §18B-1-2 of this  
22 code; any person who works regularly full-time in the service of a combined city-county health  
23 department created pursuant to §16-2-1 *et seq.* of this code; any person designated as a 21st  
24 Century Learner Fellow pursuant to §18A-3-11 of this code; and any person who works as a long-  
25 term substitute as defined in §18A-1-1 of this code in the service of a county board of  
26 education: *Provided*, That a long-term substitute who is continuously employed for at least 133  
27 instructional days during an instructional term, and, until the end of that instructional term, is  
28 eligible for the benefits provided in this article until September 1 following that instructional  
29 term: *Provided, however*, That a long-term substitute employed fewer than 133 instructional days  
30 during an instructional term is eligible for the benefits provided in this article only during such time  
31 as he or she is actually employed as a long-term substitute. On and after January 1, 1994, and  
32 upon election by a county board of education to allow elected board members to participate in the  
33 Public Employees Insurance Program pursuant to this article, any person elected to a county  
34 board of education shall be considered to be an "employee" during the term of office of the elected  
35 member. Upon election by the state Board of Education to allow appointed board members to  
36 participate in the Public Employees Insurance Program pursuant to this article, any person  
37 appointed to the state Board of Education is considered an "employee" during the term of office  
38 of the appointed member: *Provided further*, That the elected member of a county board of  
39 education and the appointed member of the state Board of Education shall pay the entire cost of  
40 the premium if he or she elects to be covered under this article. Any matters of doubt as to who

41 is an employee within the meaning of this article shall be decided by the director.

42 On or after July 1, 1997, a person shall be considered an "employee" if that person meets  
43 the following criteria:

44 (A) Participates in a job-sharing arrangement as defined in §18A-1-1 of this code;

45 (B) Has been designated, in writing, by all other participants in that job-sharing  
46 arrangement as the "employee" for purposes of this section; and

47 (C) Works at least one-third of the time required for a full-time employee.

48 (4) "Employer" means the State of West Virginia, its boards, agencies, commissions,

49 departments, institutions, or spending units; a county board of education; a public charter school

50 established pursuant to §18-5G-1 et seq. of this code if the charter school includes in its approved

51 charter application a determination to participate in the Public Employees Insurance Agency

52 program; a county, city, or town in the state; any separate corporation or instrumentality

53 established by one or more counties, cities, or towns, as permitted by law; any corporation or

54 instrumentality supported in most part by counties, cities, or towns; any public corporation charged

55 by law with the performance of a governmental function and whose jurisdiction is coextensive with

56 one or more counties, cities or towns; any comprehensive community mental health center or

57 comprehensive mental retardation intellectually and developmentally disabled facility established,

58 operated or licensed by the Secretary of Health and Human Resources pursuant to §27-2A-1 of

59 this code and which is supported in part by state, county or municipal funds; a combined city-

60 county health department created pursuant to §16-2-1 et seq. of this code; and a corporation

61 meeting the description set forth in §18B-12-3 of this code that is employing a 21st Century

62 Learner Fellow pursuant to §18A-3-11 of this code but the corporation is not considered an

63 employer with respect to any employee other than a 21st Century Learner Fellow. Any matters of

64 doubt as to who is an "employer" within the meaning of this article shall be decided by the director.

65 The term "employer" does not include within its meaning the National Guard.

66 (5) "Finance board" means the Public Employees Insurance Agency finance board created

67 by this article.

68 (6) "Person" means any individual, company, association, organization, corporation or  
69 other legal entity, including, but not limited to, hospital, medical or dental service corporations;  
70 health maintenance organizations or similar organization providing prepaid health benefits; or  
71 individuals entitled to benefits under the provisions of this article.

72 (7) "Plan", unless the context indicates otherwise, means the medical indemnity plan, the  
73 managed care plan option or the group life insurance plan offered by the agency.

74 (8) "Retired employee" means an employee of the state who retired after April 29, 1971,  
75 and an employee of the Higher Education Policy Commission, the Council for Community and  
76 Technical College Education, a state institution of higher education or a county board of education  
77 who retires on or after April 21, 1972, and all additional eligible employees who retire on or after  
78 the effective date of this article, meet the minimum eligibility requirements for their respective  
79 state retirement system and whose last employer immediately prior to retirement under the state  
80 retirement system is a participating employer in the state retirement system and in the Public  
81 Employees Insurance Agency: *Provided*, That for the purposes of this article, the employees who  
82 are not covered by a state retirement system, but who are covered by a state-approved or state-  
83 contracted retirement program or a system approved by the director, shall, in the case of  
84 education employees, meet the minimum eligibility requirements of the State Teachers  
85 Retirement System and in all other cases, meet the minimum eligibility requirements of the Public  
86 Employees Retirement System and may participate in the Public Employees Insurance Agency  
87 as retired employees upon terms as the director sets by rule as authorized in this article.  
88 Employers with employees who are, or who are eligible to become, retired employees under this  
89 article shall be mandatory participants in the Retiree Health Benefit Trust Fund created pursuant  
90 to 5-16D-1 *et seq.* of this code. Nonstate employers may opt out of the West Virginia other post-  
91 employment benefits plan of the Retiree Health Benefit Trust Fund and elect to not provide  
92 benefits under the Public Employees Insurance Agency to retirees of the nonstate employer, but

93 may do so only upon the written certification, under oath, of an authorized officer of the employer  
94 that the employer has no employees who are, or who are eligible to become, retired employees  
95 and that the employer will defend and hold harmless the Public Employees Insurance Agency  
96 from any claim by one of the employer's past, present or future employees for eligibility to  
97 participate in the Public Employees Insurance Agency as a retired employee. As a matter of law,  
98 the Public Employees Insurance Agency shall not be liable in any respect to provide plan benefits  
99 to a retired employee of a nonstate employer which has opted out of the West Virginia other post-  
100 employment benefits plan of the Retiree Health Benefit Trust Fund pursuant to this section.

**§5-16-22. Permissive participation; exemptions.**

1 The provisions of this article are not mandatory upon any employee or employer who is  
2 not an employee of or is not the State of West Virginia, its boards, agencies, commissions,  
3 departments, institutions or spending units, or a county board of education, and nothing contained  
4 in this article compels any employee or employer to enroll in or subscribe to any insurance plan  
5 authorized by the provisions of this article: Provided, That nothing in this section requires a public  
6 charter school to participate in the Public Employees Insurance Agency program.

7 Those employees enrolled in the insurance program authorized under the provisions of  
8 §21A-2B-1 *et seq.* of this code are not required to enroll in or subscribe to an insurance plan or  
9 plans authorized by the provisions of this article, and the employees of any department which has  
10 an existing insurance program for its employees to which the government of the United States  
11 contributes any part or all of the premium or cost of the premium may be exempted from the  
12 provisions of this article. Any employee or employer exempted under the provisions of this  
13 paragraph may enroll in any insurance program authorized by the provisions of this article at any  
14 time, to the same extent as any other qualified employee or employer, but employee or employer  
15 may not remain enrolled in both programs.

16 Any plan established or administered by the Public Employees Insurance Agency  
17 pursuant to this article is exempt from the provisions of chapter thirty-three of this code unless

18 explicitly stated. Notwithstanding any provision of this code to the contrary, the Public Employees  
19 Insurance Agency is not an insurer or engaged in the business of insurance as defined in chapter  
20 thirty-three of this code.

21 Employers, other than the State of West Virginia, its boards, agencies, commissions,  
22 departments, institutions, spending units, or a county board of education are exempt from  
23 participating in the insurance program provided for by the provisions of this article unless  
24 participation by the employer has been approved by a majority vote of the employer's governing  
25 body. It is the duty of the clerk or secretary of the governing body of an employer who by majority  
26 vote becomes a participant in the insurance program to notify the director not later than 10 days  
27 after the vote.

28 Any employer, whether the employer participates in the Public Employees Insurance  
29 Agency insurance program as a group or not, which has retired employees, their dependents or  
30 surviving dependents of deceased retired employees who participate in the Public Employees  
31 Insurance Agency insurance program as authorized by this article, shall pay to the agency the  
32 same contribution toward the cost of coverage for its retired employees, their dependents or  
33 surviving dependents of deceased retired employees as the State of West Virginia, its boards,  
34 agencies, commissions, departments, institutions, spending units, or a county board of  
35 education pay for their retired employees, their dependents and surviving dependents of  
36 deceased retired employees, as determined by the finance board: *Provided*, That after June 30,  
37 1996, an employer not mandated to participate in the plan is only required to pay a contribution  
38 toward the cost of coverage for its retired employees, their dependents or the surviving  
39 dependents of deceased retired employees who elect coverage when the retired employee  
40 participated in the plan as an active employee of the employer for at least five years: *Provided*,  
41 *however*, That those retired employees of an employer not participating in the plan who retire on  
42 or after July 1, 2010, who have participated in the plan as active employees of the employer for  
43 less than five years are responsible for the entire premium cost for coverage and the Public

44 Employees Insurance Agency shall bill for and collect the entire premium from the retired  
45 employees, unless the employer elects to pay the employer share of the premium. Each employer  
46 is hereby authorized and required to budget for and make such payments as are required by this  
47 section.

## CHAPTER 11. TAXATION.

### ARTICLE 8. LEVIES.

#### **§11-8-6f. Regular school board levy rate; creation and implementation of Growth County School Facilities Act; creation of Growth County School Facilities Act Fund.**

1 (a) Notwithstanding any other provision of law except §11-8-6f(c) of this code, where any  
2 annual appraisal, triennial appraisal, or general valuation of property would produce a statewide  
3 aggregate assessment that would cause an increase of two percent or more in the total property  
4 tax revenues that would be realized were the then current regular levy rates of the county boards  
5 of education to be imposed, the rate of levy for county boards of education shall be reduced  
6 uniformly statewide and proportionately for all classes of property for the forthcoming tax year so  
7 as to cause the rate of levy to produce no more than 102 percent of the previous year's projected  
8 statewide aggregate property tax revenues from extending the county board of education levy  
9 rate, unless subsection (b) of this section is complied with. The reduced rates of levy shall be  
10 calculated in the following manner: (1) The total assessed value of each class of property as it is  
11 defined by section five of this article for the assessment period just concluded shall be reduced  
12 by deducting the total assessed value of newly created properties not assessed in the previous  
13 year's tax book for each class of property; (2) the resulting net assessed value of Class I property  
14 shall be multiplied by .01; the value of Class II by .02; and the values of Classes III and IV, each  
15 by .04; (3) total the current year's property tax revenue resulting from regular levies for the boards  
16 of education throughout this state and multiply the resulting sum by one hundred two percent:  
17 *Provided*, That the 102 percent figure shall be increased by the amount the boards of education's

18 increased levy provided for in subsection (b), section eight, article one-c of this chapter; (4) divide  
19 the total regular levy tax revenues, thus increased in subdivision (3) of this subsection, by the  
20 total weighted net assessed value as calculated in subdivision (2) of this subsection and multiply  
21 the resulting product by 100; the resulting number is the Class I regular levy rate, stated as cents-  
22 per-100 of assessed value; and (5) the Class II rate is two times the Class I rate; Classes III and  
23 IV, four times the Class I rate as calculated in the preceding subdivision.

24 An additional appraisal or valuation due to new construction or improvements, including  
25 beginning recovery of natural resources, to existing real property or newly acquired personal  
26 property shall not be an annual appraisal or general valuation within the meaning of this section,  
27 nor shall the assessed value of the improvements be included in calculating the new tax levy for  
28 purposes of this section. Special levies shall not be included in any calculations under this section.

29 (b) After conducting a public hearing, the Legislature may, by act, increase the rate above  
30 the reduced rate required in subsection (a) of this section if an increase is determined to be  
31 necessary.

32 (c) Beginning with the 2020 fiscal year and the 2019 tax year, §11-8-6f(a) and (b) of this  
33 code shall expire and the regular levy rates for the county boards of education shall be the  
34 following: (1) For Class I property, 19.4 cents per \$100; (2) for Class II property, 38.8 cents per  
35 \$100; and (3) for Class III and Class IV property, 77.6 cents per \$100: Provided, That county  
36 boards of education may increase their regular levy rates through a majority vote of their members  
37 up to the sum of the levy rates set forth in subdivisions (1), (2), and (3), section six-c of this article  
38 for each class of property, which are: (1) For Class I property, 22.95 cents per \$100; (2) for Class  
39 II property, 45.9 cents per \$100; and (3) for Class III and Class IV property, 91.8 cents per \$100:  
40 Provided, however, That prior to any regular levy rate increase, such increase must be approved  
41 by a majority vote of the voters of the county.

42 (c) (d) The State Tax Commissioner shall report to the Joint Committee on Government  
43 and Finance and the Legislative Oversight Commission on Education Accountability by March 1

44 of each year on the progress of assessors in each county in assessing properties at the  
45 Constitutionally required 60 percent of market value and the effects of increasing the limit on the  
46 increase in total property tax revenues set forth in this section to two percent.

47 ~~(d)~~ (e) *Growth County School Facilities Act. — Legislative findings. —*

48 The Legislature finds and declares that there has been, overall, a statewide decline in  
49 enrollment in the public schools of this state; due to this decline, most public schools have ample  
50 space for students, teachers, and administrators; however, some counties of this state have  
51 experienced significant increases in enrollment due to significant growth in those counties; that  
52 those counties experiencing significant increases do not have adequate facilities to accommodate  
53 students, teachers, and administrators. Therefore, the Legislature finds that county boards of  
54 education in those high-growth counties should have the authority to designate revenues  
55 generated from the application of the regular school board levy due to new construction or  
56 improvements placed in a Growth County School Facilities Act Fund be used for school facilities  
57 in those counties to promote the best interests of this state's students.

58 (1) For the purposes of this subsection, "growth county" means any county that has  
59 experienced an increase in second month net enrollment of 50 or more during any three of the  
60 last five years, as determined by the state Department of Education.

61 (2) The provisions of this subsection shall only apply to any growth county, as defined in  
62 subdivision (1) of this subsection, that, by resolution of its county board of education, chooses to  
63 use the provisions of this subsection.

64 (3) For any growth county, as defined in subdivision (1) of this subsection, that adopts a  
65 resolution choosing to use the provisions of this subsection, pursuant to subdivision (2) of this  
66 subsection, assessed values resulting from additional appraisal or valuation due to new  
67 construction or improvements to existing real property shall be designated as new property values  
68 and identified by the county assessor. The statewide regular school board levy rate as established  
69 by the Legislature shall be applied to the assessed value designated as new property values and

70 the resulting property tax revenues collected from application of the regular school board levy rate  
71 shall be placed in a separate account designated as the Growth County School Facilities Act  
72 Fund. Revenues deposited in the Growth County School Facilities Act Fund shall be appropriated  
73 by the county board of education for construction, maintenance or repair of school facilities.  
74 Revenues in the fund may be carried over for an indefinite length of time and may be used as  
75 matching funds for the purpose of obtaining funds from the School Building Authority or for the  
76 payment of bonded indebtedness incurred for school facilities. For any growth county choosing  
77 to use the provisions of this subsection, estimated school board revenues generated from  
78 application of the regular school board levy rate to new property values are not to be considered  
79 as local funds for purposes of the computation of local share under the provisions of §18-9A-11  
80 of this code.

81 (e) (f) This section, as amended during the legislative session in the year 2004, shall be  
82 effective as to any regular levy rate imposed for the county boards of education for taxes due and  
83 payable on or after July 1, 2004. If any provision of this section is held invalid, the invalidity shall  
84 not affect other provisions or applications of this section which can be given effect without the  
85 invalid provision or its application and to this end the provisions of this section are declared to be  
86 severable.

## ARTICLE 21. PERSONAL INCOME TAX.

### §11-21-25. Education expenses tax credits.

1 (a) Credit allowed. — For those tax years beginning on or after January 1, 2019, there is  
2 allowed a nonrefundable credit against taxes imposed by this article for expenditures on qualified  
3 educational expenses incurred by a classroom teacher employed by a public or private school  
4 and for expenditures on qualified educational expenses incurred by a classroom aide, autism  
5 mentor, braille specialist, early childhood classroom assistant, paraprofessional, sign language  
6 assistant teacher, educational sign language interpreter or sign support specialist, as those  
7 positions are defined in §18A-4-8 of this code employed in a public school or in a comparable

8 position in a private school in this state.

9       (b) Amount of credit. — The credit allowed for teachers or service persons specified in  
10      subsection (a) of this section shall not exceed \$250 annually.

11       (c) Qualifying educational expenses. — Qualifying expenses include costs relating to  
12      computer equipment including education-related software and services, textbooks, workbooks,  
13      curricula and other written or supplementary materials used for curricular, cocurricular, or extra-  
14      curricular instruction and expenses for curricular or cocurricular activities.

15       (d) Unused credit. — If any credit remains after application of §11-21-25(c) of this code,  
16      that amount is forfeited. A carryback to a prior taxable year is not allowed for the amount of any  
17      unused portion of any annual credit allowance.

## CHAPTER 18. EDUCATION.

### ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-16. Student transfers; definitions; legislative findings; appeals; calculating net  
enrollment; fees for transfer.

1       (a) County districts and school attendance. — Establishment of attendance zones within  
2      counties. — The county board may divide shall establish attendance zones within the county into

3      such districts as are necessary to determine to designate the schools the that its resident students  
4      of its county shall attend. Upon the written request of any parent or guardian, or person legally  
5      responsible for any student, or for reasons affecting the best interests of the schools, the  
6      superintendent may transfer students from one school to another within the county. Any  
7      aggrieved person may appeal the decision of the county superintendent to the county board, and  
8      the decision of the county board shall be is final.

9       (b) Transfers between counties; legislative findings —

10       (1) Transfers of students from one county to another may be made by the county board of  
11      the county in which the student desiring to be transferred resides. The transfer shall be subject to

12 the approval of both the board of the county in which the student resides and the board to which  
13 the student wishes to be transferred.

14 (2) *Legislative findings.* Over the past several years, counties have been forced to close  
15 a number of schools because of declining student enrollment. School officials predict that an  
16 additional eighteen percent loss in enrollment may occur between 2002 and 2012. This continued  
17 decrease in the number of students enrolled in the public schools of the state may result in more  
18 instances of consolidation which will increase the problem of long bus rides for students if they  
19 remain in a school in their county of residence.

20 Therefore the Legislature makes the following findings:

21 (A) County lines may impede the effective and efficient delivery of education services;

22 (B) Students often must endure long bus rides to a school within their county of residence  
23 when a school in an adjacent county is a fraction of the distance away;

24 (C) The wishes of parents or guardians to have their children transferred to a county other  
25 than their county of residence should be considered by the county boards; and

26 (D) Where counties cannot agree, it is necessary to establish a process to determine when  
27 transfers are appropriate.

28 (3) The state board shall establish a process whereby a parent or guardian of a student  
29 may appeal the refusal of a county board to enter into an agreement to transfer or accept the  
30 transfer of the student.

31 (A) The process shall designate the state superintendent to hear the appeal. In  
32 determining whether to overturn a decision of a county board, the state superintendent shall  
33 consider such factors as the following:

34 (i) Travel time for the student;

35 (ii) Impact on levies or bonds;

36 (iii) Other financial impact on the county of residence; and

37 (iv) Such other factors as the state superintendent may determine.

(B) If, during the appeal process, the state superintendent discovers that the education welfare of students in the transferring county could be enhanced, the state superintendent direct that students may be permitted to attend a school in another county.

(C) If multiple appeals are received from the same geographical area of a county, the state superintendent may impose on the receiving county restrictions including, but not limited to, requiring the receiving county to accept all students in that geographical area of the sending county who wish to transfer to the receiving county.

(D) If a student is transferred on either a full time or a part time basis without the consent of both boards by official action as reflected in the minutes of their respective meetings the student's parent or guardian fails to appeal or loses the appeal under the process established in subdivision (3) of this subsection, the student shall be counted only in the net enrollment of the county in which the student resides.

(4) If, after two county boards have agreed to a transfer arrangement for a student, that student chooses to return to a school in his or her county of residence after the second month of school year, the following shall apply:

(A) The county of residence may issue an invoice to the county from which the student  
attended for the amount, determined on a pro rata basis, that the county of residence otherwise  
would have received under the state basic foundation program established in article nine-a [§§  
1 et seq.] of this chapter; and

(B) The county from which the student transferred shall reimburse the county of residence amount of the invoice.

(c) *Transfers between high schools.*—In any county where a high school is maintained, geography, impassable roads, long bus rides, or other conditions prevent the practicable transportation of any students to such high school, the board may transfer them to a high school in adjoining county. In any such case, the county boards may enter into an agreement providing payment of the cost of transportation, if any, of the students.

64                   (b) *Definitions.* – For the purposes of this section, unless a different meaning clearly

65                   appears from the context:

66                   “Nonresident student” means a student who resides in this state and who is enrolled in or

67                   is seeking enrollment in a county school district other than the county school district in which the

68                   student resides.

69                   “Open enrollment” means a policy adopted and implemented by a county board to allow

70                   nonresident students to enroll in any school within the district. Open enrollment is distinct from a

71                   mutual agreement of two county boards regarding mass transfer of students, as contemplated in

72                   §18-5-13(f)(1)(C) of this code.

73                   (c) *Enrollment policies.* – County boards may establish and implement an open enrollment

74                   policy without charging tuition and without obtaining approval from the board of the county in

75                   which a student resides and transfers. These policies shall clearly articulate any admission

76                   criteria, application procedures, transportation provisions, timelines for open enrollment periods,

77                   and restrictions on transfers due to building capacity constraints. Enrollment policies are subject

78                   to the following:

79                   (1) A county board may give enrollment preference to:

80                   (A) Siblings of students already enrolled through the open enrollment policy;

81                   (B) Secondary students who have completed tenth grade and, due to family relocation,

82                   become nonresident students, but express the desire to remain in a specific school to complete

83                   their education;

84                   (C) Students who are children, grandchildren, or legal wards of employees;

85                   (D) Students whose legal residences, though geographically within another county, are

86                   more proximate to a school within the receiving county, whether calculated by miles or

87                   transportation time; and

88                   (E) Students who reside in a portion of a county where topography, impassable roads,

89                   long bus rides, or other conditions prevent the practicable transportation of the student to a school

90       within the county, and a school within a contiguous county is more easily accessible.

91           (2) A county must comply with all enrollment requirements for children who are in foster  
92       care or who meet the definition of unaccompanied youth prescribed in the McKinney-Vento  
93       Homeless Assistance Act (42 U.S.C. §11434a(6)).

94           (3) The county board for the county educating the nonresident student may provide an  
95       adequate means of transportation to nonresident students when students have complied with the  
96       procedure for obtaining authorization to attend school outside their county of residence, subject  
97       to the following:

98           (A) County boards of education are not required to uniformly provide nonresident student  
99       transportation, and may consider whether a nonresident student meets the eligibility criteria for  
100       free or reduced price lunches and milk established within the Richard B. Russell National School  
101       Lunch Act (42 U.S.C. §1758); and

102           (B) The county board for the county educating the nonresident student shall provide  
103       transportation to and from the school of attendance, or to and from an agreed pickup point on a  
104       regular transportation route, or for the total miles traveled each day for the nonresident student to  
105       reach the school of enrollment if the nonresident student with disabilities has an individualized  
106       education program that specifies that transportation is necessary for fulfillment of the program.

107           (d) *Appeal.* – The state board of education shall establish a process whereby a parent or  
108       guardian of a student may appeal the refusal of a county board to accept the transfer of the  
109       student. If during the appeal process, the State Superintendent discovers that the education and  
110       the welfare of the student could be enhanced, the State Superintendent may direct that the student  
111       may be permitted to attend a school in the receiving county.

112           (e) *Net enrollment.* – For purposes of net enrollment as defined in §18-9A-2 of this code,  
113       whenever a student is transferred on a full-time basis from one school district to another district  
114       pursuant to the provisions of this section, the county to which the student is transferred shall  
115       include the student in its net enrollment, subject to the following:

116        (1) If, after transferring to another county, a student chooses to return to a school in his or  
117        her county of residence after the second month of any school year, the following applies:

118        (A) The county of residence may issue an invoice to the county from which the student  
119        transferred for the amount, determined on a pro rata basis, that the county of residence otherwise  
120        would have received under the state basic foundation program established in §18-9A-1 *et seq.* of  
121        this code; and

122        (B) The county from which the student transferred shall reimburse the county of residence  
123        for the amount of the invoice.

124        ~~(c) Transfers between high schools. — In any county where a high school is maintained,~~  
125        ~~but topography, impassable roads, long bus rides, or other conditions prevent the practicable~~  
126        ~~transportation of any students to such high school, the board may transfer them to a high school~~  
127        ~~in an adjoining county. In any such case, the county boards may enter into an agreement providing~~  
128        ~~for the payment of the cost of transportation, if any, of the students.~~

129        ~~(d) (f) Transfers between states. — Transfer of students from this state to another state~~  
130        ~~shall be upon such terms, including payment of tuition, as shall be mutually agreed upon by the~~  
131        ~~board of the transferring receiving county and the authorities board of the school to or district from~~  
132        ~~which the transfer is made.~~

133        ~~(e) (g) No parent, guardian, or person acting as parent or guardian shall be required to~~  
134        ~~pay for the transfer of a student or for the tuition of the student after the transfer when such the~~  
135        ~~transfer is carried out under the terms of this section.~~

136        (h) Nothing in this section supersedes the eligibility requirements for participation in extra-  
137        curricular activities established by the Secondary Schools Activities Commission.

138        (i) The amendments to this section during the 2019 regular session of the Legislature shall  
139        be effective for school years beginning on or after July 1, 2019, and the provisions of this section  
140        existing immediately prior to the 2019 regular session of the Legislature remain in effect for school  
141        years beginning prior to July 1, 2019.

**§18-5-16a. Authorization to transfer pupils from one district to another; mandatory transfer; payment of tuition; net enrollment.**

1        (a) The provisions of this section expire effective July 1, 2019: Provided, That any

2        agreements made pursuant to this section prior to July 1, 2019, shall remain in effect.

3        (b) Whenever, in the opinion of the board of Education of any county, the education and

4        welfare of a pupil will be enhanced, the board of Education of such county shall have the authority

5        to transfer any such pupil or pupils on a part-time or full-time basis from one school district to

6        another school district within the state: Provided, That the boards of education of both the

7        transferor and the transferee districts agree to the same by official action of both boards as

8        reflected in the minutes of their respective meetings.

9        (c) Any pupil attending a school in a district of this state adjacent to the district of residence

10        during the school year one thousand nine hundred eighty-four--eighty-five, is authorized to

11        continue such attendance in the adjacent district, and, upon written request therefor by the parent

12        or guardian, any person who is entitled to attend the public schools of this state and who resides

13        in the same household and is a member of the immediate family of such pupil is authorized to

14        enroll in such adjacent district. The transferor and transferee school districts shall effectuate any

15        transfer herein authorized in accordance with the provisions of this section.

16        (d) Whenever a pupil is transferred from one school district to another district on a full-

17        time or part-time basis, the board of Education of the school district in which the pupil is a bona

18        fide resident shall pay to the board of Education of the school district to which the pupil is

19        transferred a tuition that is agreed upon by both such boards. Tuition for each full-time pupil shall

20        not exceed the difference between the state aid per pupil received by the county to which the

21        pupil is transferred and the county cost per pupil in the county to which said pupil is transferred.

22        (e) For purposes of net enrollment as defined in section two, article nine-a of this chapter:

23        (1) Whenever a pupil is transferred on a full-time basis from one school district to another district

24        pursuant to the provisions of this section, the county to which the pupil is transferred shall include

25 such pupil in its net enrollment; and (2) whenever a pupil is transferred on a part-time basis from  
26 one school district to another school district pursuant to the provisions of this section, the county  
27 in which the student is a bona fide resident shall count the pupil in its net enrollment.

**§18-5-18b. School counselors in public schools.**

1 (a) A school counselor means a professional educator who holds a valid school  
2 counselor's certificate in accordance with §18-3-1 *et seq.* of this code.

3 (b) Each county board shall provide counseling services for each pupil enrolled in the  
4 public schools of the county.

5 (c) The school counselor shall work with individual pupils and groups of pupils in providing  
6 developmental, preventive and remedial guidance and counseling programs to meet academic,  
7 social, emotional, and physical needs; including programs to identify and address the problem of  
8 potential school dropouts. The school counselor also may provide consultant services for parents,  
9 teachers, and administrators and may use outside referral services, when appropriate, if no  
10 additional cost is incurred by the county board.

11 (d) The state board may adopt rules consistent with the provisions of this section that  
12 define the role of a school counselor based on the "National Standards for School Counseling  
13 Programs" of the American school counselor association. A school counselor is authorized to  
14 perform such services as are not inconsistent with the provisions of the rule as adopted by the  
15 state board. To the extent that any funds are made available for this purpose, county boards shall  
16 provide training for counselors and administrators to implement the rule as adopted by the state  
17 board.

18 (e) Each county board shall develop a comprehensive drop-out prevention program  
19 utilizing the expertise of school counselors and any other appropriate resources available.

20 (f) School counselors shall be full-time professional personnel shall spend at least  
21 ~~seventy-five eighty~~ percent of work time in a direct counseling relationship with pupils, and shall  
22 devote no more than ~~one fourth~~ twenty percent of the work day to administrative activities:

23      *Provided*, That such activities are counselor related.

24                (g) Nothing in this section prohibits a county board from exceeding the provisions of this  
25      section, or requires any specific level of funding by the Legislature.

**§18-5-32. Assistant superintendents; directors and supervisors of instruction and other  
educational activities.**

1                (a) The county board, upon the recommendation of the county superintendent, may  
2      employ an assistant whose term of employment may be not less than one nor more than four  
3      years: *Provided*, That his or her term may not extend beyond that of the incumbent county  
4      superintendent.

5                (b) The board may not employ more than one assistant for each 200 teachers or major  
6      fraction thereof.

7                (c) The county board, upon the recommendation of the county superintendent, is  
8      authorized to employ general and special supervisors or directors of instruction and of other  
9      educational activities as may be considered necessary.

10               (d) The employment of the assistant superintendent shall be on a 12-month basis. ~~The  
11      period of employment for all others named herein shall be at the discretion of the county board.~~

12               (e) Rules for qualifications of assistant superintendents, and directors and supervisors of  
13      instruction and of other educational activities shall be fixed by the state board: *Provided*, That the  
14      qualifications required for any assistant superintendent may not be higher than those required for  
15      the county superintendent: *Provided, however*, That the rules do not affect the status of any  
16      incumbent nor his or her right to succeed himself or herself in his or her assigned position.

17               (f) The county board is authorized to reimburse the employees for their necessary traveling  
18      expenses upon presentation of a monthly, itemized, sworn statement approved by the county  
19      superintendent.

20               (g) Any person employed under the foregoing provision of this section, provided he or she  
21      holds a valid teacher's certificate, shall be given continuing contract status as a teacher and shall

22 hold that status unless dismissed for statutory reasons: Provided, That central office  
23 administrators, supervisors, and directors who begin employment in their new position after July  
24 1, 2020 shall serve at the will and pleasure of the superintendent and may be removed by the  
25 superintendent upon approval of the county board.

26 (h) The job duties of a professional educator employed under the provisions of this section,  
27 including a professional educator employed as a "supervisor" or "central office administrator" as  
28 defined in §18A-1-1 of this code, shall include substitute teaching on at least three instructional  
29 days each school year: *Provided, That the substitute teaching requirement of this subsection does*  
30 *not apply to the superintendent and those who have never held a teaching certificate or an*  
31 *administrative certificate.*

32 (i) All acts or parts of acts inconsistent with this section are hereby repealed.

**§18-5-45a. Further expressions of legislative intent with respect to school calendar;**  
**applicability to time lost due to work stoppage or strike; effect on pay.**

33 (a) §18-5-45 of this code is designed to define the school term both for employees and for  
34 instruction. The employment term consists of at least 200 days as provided in that section and,  
35 within the employment term, an instructional term for students must consist of at least 180  
36 separate instructional days. §18-5-45 of this code also defines the minimum length of an  
37 instructional day, requires county boards to develop a policy for additional minutes of instruction  
38 to recover time lost due to late arrivals and early dismissals, and also allows schools with an  
39 instructional day in excess of certain minimums to apply this equivalent instructional time to cancel  
40 time lost due to necessary closures and other purposes designed to improve instruction. The use  
41 of equivalent time gained to cancel days lost and the use of alternative methods to deliver  
42 instruction on canceled days as defined in §18-5-45 of this code constitute instructional days for  
43 the purposes of meeting both the 200-day minimum employment term and the 180-day minimum  
44 separate instructional day requirements. The Legislature intended with the enactment of these  
45 provisions regarding equivalent instructional time and alternative instructional delivery to help

46 improve instruction and lessen the disruption to the planned school calendar if rescheduling and  
47 adding instructional days became necessary to make up lost days due to closures pursuant to  
48 §18-4-10(5) of this code when conditions are detrimental to the health, safety, or welfare of pupils.  
49 The Legislature did not intend with the enactment of these provisions to permit a reduction of the  
50 instructional term for students or of the employment term for personnel when the conditions  
51 causing the closure of the school are a concerted work stoppage or strike by the employees. The  
52 provisions of §18-5-45 of this code permitting accrued or equivalent instructional time to cancel  
53 days lost, and the delivery of instruction through alternative methods, do not apply to and may not  
54 be used to cancel days lost due to a concerted work stoppage or strike.

55 (b) If an originally scheduled instruction day is canceled due to a concerted work stoppage  
56 or strike by the employees assigned to the school, the school for which the day was canceled  
57 may not participate in any extracurricular activities during any part of that same day.

**§18-5-46. Requiring teacher to change grade prohibited; teacher recommendation relating  
to promotion.**

58 (a) No teacher may be required by a principal or any other person to change a student's  
59 grade on either an individual assignment or a report card unless there is clear and convincing  
60 evidence that there was a mathematical error in calculating the student's grade.

61 (b) The teacher's recommendation relating to whether or not a student should be promoted  
62 to the next grade level shall be a primary consideration when making such a determination.

**5B. SCHOOL INNOVATION ZONES ACT**

**§18-5B-14. Termination of funding for School Innovation Zones and Local Solution  
Dropout Prevention and Recovery Innovation Zones. Funding for Innovation Zones.**

1 No school, group of schools, district, subdivision or department of a group of schools, or  
2 a subdivision or department of a school designated or to be designated as an Innovation Zone or  
3 Local Solution Dropout Prevention and Recovery Innovation Zone shall receive any funding  
4 pursuant to this article after June 30, 2016.

5        Nothing in this section prevents counties from establishing magnet schools within their  
6        boundaries and such magnet schools shall be eligible for funding under the terms of the Act.

**§18-5B-15. Funding for Innovation Zones.**

1        There is hereby created in the State Treasury a special revenue fund to be known as the  
2        "Innovation Zone Fund." The fund shall consist of all moneys received from whatsoever source  
3        to further the purpose of this article. The fund shall be administered by the state board solely for  
4        the purposes of this article, including providing grants and other financial assistance to innovation  
5        zone designated schools to implement and carry out such school's innovation zone plans. Any  
6        moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the  
7        next fiscal year. Fund balances shall be invested with the state's consolidated investment fund  
8        and any and all interest shall be used solely for the purposes that moneys deposited in the fund  
9        may be used pursuant to this article.

**ARTICLE 5G. PUBLIC CHARTER SCHOOLS.**

**§18-5G-1. Legislative purpose and intent.**

1        (a) The West Virginia Legislature hereby authorizes a pilot program under which public  
2        charter schools may be authorized to allow new, innovative, and more flexible ways of educating  
3        all children who choose to attend and advance a renewed commitment to the mission, goals, and  
4        diversity of public education. The purposes of this public charter school initiative are to:

5        (1) Improve student learning by creating more diverse public schools with high standards  
6        for student performance;

7        (2) Provide innovative educational methods and practices through programs that engage  
8        students in the learning process, thus resulting in higher student achievement;

9        (3) Enable schools to establish a distinctive school curriculum, a specialized academic  
10      theme, or method of instruction; and

11      (4) Allow schools enhanced freedom and flexibility in exchange for exceptional levels of  
12      results-driven accountability.

## §18-5G-2. Definitions.

1       The following words used in this article and any proceedings pursuant thereto have the  
2       following meanings unless the context clearly indicates a different meaning:

3           (1) "Applicant" means any group or entity with 501(c)(3) tax-exempt status or that has  
4       submitted an application for 501(c)(3) tax-exempt status that develops and submits an application  
5       for a public charter school to an authorizer: *Provided*, That in the case of a conversion public  
6       charter school, "Applicant" means an organization or group comprised primarily of parents and  
7       others who reside within the community served by a noncharter public school who:

8           (A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for  
9       501(c)(3) tax-exempt status;

10           (B) Develop and submit an application to become a conversion public charter school to  
11       the county board of the county wherein the school is located;

12           (C) May include as partner organizations a public or private institution or institutions of  
13       higher education and partners in business and industry; and

14           (D) Include in the application for conversion to a public charter school, in addition to the  
15       other requirements of this article, the demonstrated support for the proposed conversion to a  
16       public charter school as evidenced by:

17           (A) A petition for conversion signed by a majority of the employees of the school proposed  
18       for conversion; and

19           (B) A petition for conversion signed by a majority of the parents, guardians or custodians  
20       of the students enrolled in the school proposed for conversion.

21           (2) "Authorizer" means the entity authorized under this article to review and approve or  
22       deny charter applications, enter into charter contracts with applicants, oversee public charter  
23       schools, and determine whether to renew, not renew, or revoke charter contracts. Authorizers  
24       include:

25           (A) A county school board in the county in which a public charter school is proposed to be

26     located:

27                 (B) Two or more county school boards representing the several counties which a public  
28     charter school is proposed to serve; or

29                 (C) The West Virginia Public Charter School Commission established pursuant to §18-  
30     5G-10 of this code: *Provided, That the Commission may authorize a public charter schools only*  
31     *upon the request by a county board that the Commission assume the role of authorizer;*

32                 (3) "Charter application" means a proposal from an applicant to an authorizer to enter into  
33     a charter contract whereby the proposed school obtains public charter school status;

34                 (4) "Charter contract" or "contract" means a fixed-term, renewable contract between a  
35     public charter school's governing board and an authorizer that identifies the roles, powers,  
36     responsibilities, operational duties, accountability, and performance expectations for each party  
37     to the contract, consistent with the requirements of this article;

38                 (6) "Conversion public charter school" means a public charter school that existed as a  
39     noncharter public school before becoming a public charter school;

40                 (7) "County board" means a county board of education;

41                 (8) "Education service provider" means an education management organization, school  
42     design provider, or any other partner entity with which a public charter school contracts for  
43     educational design, implementation, or comprehensive management;

44                 (9) "Governing board" means a board of directors as provided for in §18-5G-3 of this code;

45                 (10) "Noncharter public school" means a public school other than a public charter school  
46     established pursuant to this article;

47                 (11) "Parent" means a parent, guardian, or other person or entity having legal custody  
48     over a child;

49                 (12) "Public charter school" means a public school established pursuant to this article that:

50                 (A) Is a public school and is part of the state's system of public education but is exempt  
51     from all statutes and administrative regulations applicable to the state board, a county board, or

52        a school unless expressly stated otherwise in this article: *Provided, That nothing in this article*  
53        prohibits a public charter school from complying with any statute, state board policy, or county  
54        board policy applicable to noncharter public schools;

55            (B) Is a public corporate body, exercising public power through its governing board,  
56        including the power in name to contract and be contracted with, sue and be sued, and adopt  
57        bylaws not inconsistent with this article;

58            (C) Has autonomy over decisions relating to finance, personnel, scheduling, curriculum,  
59        and instruction consistent with this article and its charter contract;

60            (D) Is governed by a governing board that is independent of a county board except as  
61        otherwise provided in this article;

62            (E) Is established and operating under the terms of a charter contract between the public  
63        charter school's governing board and its authorizer;

64            (F) Is a public school to which parents choose to send their children;

65            (G) Is a public school that admits students on the basis of a random and open lottery if  
66        more students apply for admission than can be accommodated, pursuant to and subject to §18-  
67        5G-4 of this code;

68            (H) Offers a comprehensive instructional program that meets or exceeds the student  
69        performance standards adopted pursuant to §18-2E-5 of this code; and

70            (I) Operates under the oversight of its authorizer in accordance with its charter contract;

71            (13) "State board" means the West Virginia Board of Education; and

72            (14) "Student" means any person that is eligible for attendance in a public school in West  
73        Virginia.

**§18-5G-3. Authorization for the establishment of public charter schools; governing board.**

1            (a) The authorization for the establishment of public charter schools in this state is limited  
2        as a pilot project to five public charter schools: *Provided, That the West Virginia Schools for the*  
3        Deaf and the Blind may be an applicant to the West Virginia Board of Education to become a

4        public charter school and if authorized by the West Virginia Board of Education, this public charter  
5        school is not within the five school limit. The West Virginia Board of Education may request the  
6        West Virginia Public Charter School Commission to assume the role of authorizer.

7            (b) No elected official may profit or receive any monetary consideration from a charter  
8        school: *Provided*, That this prohibition does not apply with respect to the employment of an elected  
9        official who was employed by a school prior to conversion to a public charter school.

10           (c) A public charter school authorized under this article is part of the state's system of  
11        public education but is exempt from all statutes and administrative regulations applicable to the  
12        state board, a county board, or a school unless expressly stated otherwise in this article. A public  
13        charter school shall:

14                (1) Adhere to the same immunization, civil rights, and disability rights requirements  
15        applicable to noncharter public schools;

16                (2) Have no entrance requirements or charge any tuition or fees: *Provided*, That a public  
17        charter school may require the payment of fees on the same basis and to the same extent as  
18        noncharter public schools.

19                (3) Have no power to levy taxes.

20                (4) Be governed by a governing board as specified in subsection (d) of this section;

21                (5) Provide instructional time that is at least equal to the number of days or their equivalent  
22        required by §18-5-45 of this code;

23                (6) Require criminal background checks for staff and volunteers, including members of its  
24        governing board, as required of all noncharter public school employees and volunteers;

25                (7) Prohibit contractors and service providers or their employees from making direct,  
26        unaccompanied contact with students or accessing school grounds unaccompanied when  
27        students are present if it cannot be verified that the contractors, service providers, or their  
28        employees have not been previously convicted of a qualifying offense pursuant to §18-5-15c of  
29        this code;

(8) Ensure student participation in the required state summative assessment pursuant to §18-2E-5 of this code;

(9) Adhere to generally accepted accounting principles and adhere to the same financial audits, audit procedures, and audit requirements applicable to noncharter public schools;

(10) Utilize the same system for reporting student information data and financial data as is utilized by noncharter public schools:

(11) Comply with the Freedom of Information Act as set forth in §29B-1-1 et seq. of this

(12) Report data using the West Virginia Education Information System or successor data reporting system that noncharter public schools use:

(13) Operate under the oversight of its authorizer in accordance with its charter contract;

(14) As a public corporate body, have the powers necessary for carrying out the terms of its charter contract,

its charter contract, including, but not limited to the power to:

(A) Receive and disburse funds for school purposes:

(B) Secure appropriate insurance and enter into contracts and leases

(C) Contract with an education service provider, so long as the governing board retains oversight and authority over the school;

final oversight and authority over the school;

(D) Pledge, assign, or encumber its assets to be used as collateral for loans or extensions

of credit; \_\_\_\_\_ as collateral for loans or extensions

(E) Solicit and accept any gifts or grants for school purposes, subject to applicable laws

and the terms of its charter; and

(F) Acquire real property for use as its facilities or facilities from public or private sources:

(15) Enroll students in the public charter school pursuant to §18-5G-4 of this code;

(16) Require any education service provider contracted with the governing board to

provide a monthly detailed budget to the manager.

(17) Serve one or more of grades and limit admission to students within the county.

56     served; and

57           (18) Provide programs and services to a student with a disability in accordance with the  
58           student's individualized education program and all federal and state laws, rules, and regulations.  
59           A public charter school shall deliver the services directly or contract with another provider to  
60           deliver the services.

61           (d) A public charter school authorized under this article may:

62            (1) Negotiate and contract with its authorizer or any third party for the use, operation, and  
63           maintenance of a building and grounds, liability insurance, and the provision of any service,  
64           activity, or undertaking that the public charter school is required to perform in order to carry out  
65           the educational program described in its charter contract. Any services for which a public charter  
66           school contracts with a school district shall be provided by the district at cost and shall be  
67           negotiated as a separate agreement after final charter contract negotiations;

68            (2) Sue and be sued in its own name;

69            (3) Own, rent, or lease its space;

70            (4) Participate in cocurricular activities to the same extent as noncharter public schools;

71     and

72            (5) Participate in extracurricular activities to the same extent as noncharter public schools.

73            (e) Nothing in this article prohibits a public charter school from complying with any statute,  
74           state board policy, or county board policy applicable to noncharter public schools.

75            (f) A county board may not require any employee of the local school district to be employed  
76           in a charter school. A county board may not harass, threaten, discipline, discharge, retaliate or in  
77           any manner discriminate against any district employee involved directly or indirectly with an  
78           application to establish a charter school as authorized under this section.

79            (g) All personnel employed by a public charter school shall continue to accrue seniority  
80           with the county board in the same manner that they would accrue seniority if employed in a  
81           noncharter public school in the county, but only for purposes of employment in noncharter public

82      schools.

83            (g) Public charter school governing board. —

84            (1) To ensure compliance with this article, a public charter school shall be administered  
85        by a governing board accountable to the authorizer as set forth in the charter contract. A public  
86        charter school governing board shall consist of no fewer than five members.

87            (2) The governing board of a conversion public charter school authorized under this article  
88        shall consist of the following members elected or selected in a manner specified in the charter  
89        application:

90            (2) The governing board shall consist of at least two parents of students attending the  
91        public charter school operating under the governing board; and

92            (3) Members of the governing board shall:

93            (A) Not be an employee of the public charter school administered by the governing board;

94            (B) Not be an employee of an education service provider that provides services to the  
95        public charter school; and

96            (C) File a full disclosure report to the authorizer identifying potential conflicts of interest,  
97        relationships with management organizations, and relationships with family members who have  
98        other business dealings with the school, the management organization of the school, or any other  
99        public charter school.

100            (4) Members of the governing board shall collectively possess expertise in leadership,  
101        curriculum and instruction, law, and finance.

102            (5) A member of the public charter school governing board shall be considered an officer  
103        of a school district under the provisions of §6-6-7 of this code, and may only be removed from  
104        office under the provisions of that section.

105            (6) The governing board shall be responsible for the operation of its public charter school,  
106        including, but not limited to, preparation of an annual budget, contracting for services, school  
107        curriculum, personnel matters, and achieving the objectives and goals of the public charter

108 school's program.

109        (7) The governing board shall comply with open governmental proceedings requirements  
110 set forth in §6-9A-1 et seq. of this code.

**§18-5G-4. Enrollment in a public charter school; recruitment and retention plans.**

1        (a) A public charter school may enroll any student residing in the state. A student enrolled  
2 in a public charter school shall be included in the net enrollment of the county in which the school  
3 is located for the purposes of §18-9A-1 et seq. and shall be allocated to the public charter school  
4 in accordance with the State Board rule promulgated pursuant to section §18-5G-13 of this article.

5        (b) A conversion public charter school shall guarantee enrollment to all students who were  
6 previously enrolled in the noncharter public school and to all students who reside in the school's  
7 attendance area. All students who reside in the attendance area of a public school that converts  
8 to a public charter school may enroll in the public charter school if they choose to do so. The  
9 school shall adopt and maintain a policy that gives enrollment preference to students who reside  
10 within the attendance area as established prior to the conversion of the school. An enrollment  
11 preference also shall be given to students enrolled in the public charter school the previous school  
12 year and to siblings of students already enrolled in the public charter school. If the school has  
13 excess capacity after enrolling students within the attendance area and those with preference,  
14 students outside the attendance area are eligible for enrollment;

15        (c) Except as provided in subsection (b) of this section, if the capacity of a public charter  
16 school is insufficient to enroll all students who wish to attend any specific grade level at a public  
17 charter school, the school shall select students through a randomized and transparent lottery:  
18 Provided, That the state board shall promulgate a rule to guide student application and lottery  
19 procedures for public charter schools.

20        (d) Enrollment preference for public charter schools shall be given to students enrolled in  
21 the public charter school the previous year and to siblings of students already enrolled in the  
22 school. An enrollment preference for returning students shall exclude those students from

23 entering into a lottery, as identified in §18-5G-4(b) of this code.

24 (e) A public charter school may allow an enrollment preference for students who meet  
25 federal eligibility requirements for free or reduced-price meals and at-risk students.

26 (f) A public charter school may give enrollment preference to children of a public charter  
27 school's governing board members and full-time employees, as long as they constitute no more  
28 than 10 percent of the school's total student population.

29 (g) Every charter school shall submit a recruitment and retention plan annually to its  
30 authorizer. The plan shall list deliberate, specific strategies the school will use to attract, enroll,  
31 and retain a student population that includes students who are, to the extent applicable:

32 (1) Limited English proficient;

33 (2) Special education;

34 (3) Low income;

35 (4) Below proficiency on the comprehensive statewide student assessment;

36 (5) At risk of dropping out of school;

37 (6) Have dropped out of school; or

38 (7) Any others who should be targeted to eliminate achievement gaps.

39 (h) If a student who was previously enrolled in a public charter school transfers enrollment  
40 to a noncharter public school in this state, the school to which the student transfers shall accept  
41 credits earned by the student in courses or instructional programs at the public charter school in  
42 a uniform and consistent manner and according to the same criteria that are used to accept  
43 academic credits from other noncharter public schools or that consider content competency when  
44 appropriate due to differences in curriculum delivery, instructional methods and strategies, or  
45 course designations and sequence.

#### **§18-5G-5. Application to establish public charter school.**

1 (a) To establish a new public charter school or to convert an existing noncharter public  
2 school to a public charter school, an applicant shall submit a charter application to an authorizer:

3     Provided, That only a county board may authorize the conversion of an existing noncharter public  
4     school to a public charter school. Charter authorizers shall accept and document the date and  
5     time of receipt of all charter applications.

6             (b) The application shall contain, at a minimum, the following information:

7             (1) A mission statement and a vision statement for the public charter school, including  
8     specialized academic focus, if any, to be promoted and advanced through the establishment of  
9     the public charter school;

10            (2) A detailed description of the public charter school's proposed program;

11            (3) The student achievement goals for the public charter school's program and the chosen  
12     methods of evaluating whether students have attained the skills and knowledge specified for  
13     those goals;

14            (4) The school's plan for using data derived from student evaluations and assessments,  
15     including the statewide summative assessment, to drive instruction and promote continued school  
16     improvement;

17            (5) An explanation of how the school's proposed program is likely to improve the  
18     achievement of traditionally underperforming students in the local school district;

19            (6) The proposed governance structure of the school, including a list of members of the  
20     initial governing board, a draft of bylaws that include the description of the qualifications, terms,  
21     and methods of appointment or election of governing board members, and the organizational  
22     structure of the school that clearly presents lines of authority and reporting between the governing  
23     board, school administrators, staff, any related bodies such as advisory bodies or parent and  
24     teacher councils, and any external organizations that will play a role in managing the school;

25            (7) Plans and timelines for student enrollment, including policies and procedures for  
26     conducting transparent and random admission lotteries that are open to the public, and that are  
27     consistent with this article;

28            (8) A proposed five-year budget, including the start-up year and projections for four

29 additional years with clearly stated assumptions;

30 (9) Proposed fiscal and internal control policies for the public charter school;

31 (10) Acknowledgement that the public charter school will participate in the state's  
32 accountability system;

33 (11) A proposed handbook that outlines the personnel policies of the public charter school,  
34 including the criteria to be used in the hiring of qualified teachers, school administrators, and other  
35 school employees, a description of staff responsibilities, and the school's plan to evaluate  
36 personnel on an annual basis;

37 (12) An explanation of proposed student discipline procedures, including disciplinary  
38 procedures for students with disabilities, which shall be consistent with the requirements of due  
39 process and with state and federal laws and regulations governing the placement of students with  
40 disabilities;

41 (13) A description of the facilities to be used by the public charter school, including the  
42 location of the school and how the facility supports the implementation of the school's program.  
43 The school shall obtain all required occupation and operation certificates and licenses prior to the  
44 first instructional day for students;

45 (14) The proposed ages and grade levels to be served by the public charter school,  
46 including the planned minimum and maximum enrollment per grade per year;

47 (15) The school calendar and school day schedule, which shall meet the requirements of  
48 §18-5-45 of this code;

49 (16) Types and amounts of insurance coverage to be obtained by the public charter  
50 school, which:

51 (A) Shall include adequate insurance for liability, property loss, and the personal injury of  
52 students comparable to noncharter public schools within the local school district operated by the  
53 county board; and

54 (B) May include coverage from the Board of Risk and Insurance Management pursuant to

55     §29-12-5a of this code:

56             (17) A description of the food services to be provided to students attending the school;

57             (18) Process and procedures to be followed in the case of the closure or dissolution of the

58     public charter school, including provisions for the transfer of students and student records to the

59     appropriate local school district and an assurance and agreement to payment of net assets or

60     equity, after payment of debts as specified in §18-5G-8 of this code;

61             (19) A code of ethics for the school setting forth the standards of conduct expected of its

62     governing board, officers, and employees;

63             (20) The public charter school's plan for successfully serving students with disabilities,

64     students who are English language learners, bilingual students, and students who are

65     academically behind and gifted, including, but not limited to, the school's plan for compliance with

66     all applicable federal and state laws and regulations;

67             (21) A description of cocurricular and extracurricular programs to be offered by the public

68     charter school and how they will be funded and delivered;

69             (22) The process by which the school will resolve any disputes with the authorizer;

70             (23) A detailed start-up plan, including financing, tasks, timelines, and individuals

71     responsible for carrying out the plan; and

72             (24) The public charter school's plan for parental involvement.

73             (c) If the applicant intends to contract with an education service provider for educational

74     program implementation or comprehensive management, the application shall additionally require

75     the applicant to provide the following information with respect to the educational service provider:

76             (1) Evidence of success in serving student populations similar to the targeted population,

77     including demonstrated academic achievement as well as successful management of

78     nonacademic school functions, if applicable;

79             (2) Student performance data and financial audit reports for all current and past public

80     charter schools;

(3) Documentation of and explanation for any actions taken, legal or otherwise, against

any of its public charter schools for academic, financial, or ethical concerns;

(4) The proposed duration of the service contract;

(5) The annual proposed fees and other amounts to be paid to the education service

provider;

(6) The roles and responsibilities of the governing board, the school staff, and the

education service provider;

(7) The scope of services and resources to be provided by the education service provider;

**(8) Performance evaluation measures and timelines;**

#### (9) Methods of contract oversight and enforcement:

**(10) Investment disclosure:**

(11) Conditions for renewal and termination of the contract; and

(12) Disclosure and explanation any existing or potential conflicts of interest between the

governing board and the proposed education service provider or any affiliated business entities.

### **§18-5G-6. Authorizer duties and responsibilities.**

(a) An authorizer shall:

(1) Demonstrate public accountability and transparency in all matters concerning its

charter-authorizing practices, decisions, and expenditures;

(2) Approve new charter applications that meet the requirements of this section and §18-

5G-5 of this code, demonstrate the ability to operate the school in an educationally and fiscally

sound manner, and are likely to improve student achievement through the program detailed in

the charter application;

(3) Decline to approve charter applications that fail to meet the requirements of §18-5G-5

of this code;

(4) Negotiate and execute in good faith a charter contract with each public charter school

it authorizes:

12                   (5) Monitor the performance and compliance of public charter schools according to the  
13                   terms of the charter contract;

14                   (6) Determine whether each charter contract it authorizes merits renewal or revocation;  
15                   and

16                   (7) Establish and maintain policies and practices consistent with the principles and  
17                   professional standards for authorizers of public charter schools, including standards relating to:

18                   (A) Organizational capacity and infrastructure;

19                   (B) Evaluating applications;

20                   (C) Ongoing public charter school oversight and evaluation; and

21                   (D) Charter approval, renewal, and revocation decision-making.

22                   (b) After an applicant submits a written application to establish a public charter school, the  
23                   authorizer shall:

24                   (1) Complete a thorough review process;

25                   (2) Conduct an in-person interview with the applicant;

26                   (3) Provide an opportunity in a public forum for local residents to provide input and learn  
27                   about the charter application;

28                   (4) Provide a detailed analysis of the application to the applicant or applicants;

29                   (5) Allow an applicant a reasonable time to provide additional materials and amendments  
30                   to its application to address any identified deficiencies; and

31                   (6) Approve or deny a charter application based on established objective criteria or request  
32                   additional information.

33                   (c) In deciding to approve a charter application, the authorizer shall:

34                   (1) Approve charter applications only to applicants that possess competence in all  
35                   elements of the application requirements identified in this section and §18-5G-5 of this code;

36                   (2) Base decisions on documented evidence collected through the application review  
37                   process; and

38        (3) Follow charter-granting policies and practices that are transparent, based on merit,  
39        and avoid conflicts of interest.

45                   (e) An authorizer's charter application approval shall be submitted to the West Virginia  
46                   Department of Education.

47 (f) No public charter school may begin operations prior to July 1, 2020.

48 (g) Notwithstanding any provision of this code to the contrary, no civil liability shall attach  
49 to an authorizer or to any of its members or employees for any acts or omissions of the public  
50 charter school. Neither the county board of education nor the State of West Virginia shall be liable  
51 for the debts or financial obligations of a public charter school or any person or entity that operates  
52 a public charter school.

53 (h) To cover authorizer costs for overseeing public charter schools in accordance with this  
54 Act, each public charter school shall remit to its respective authorizer an oversight fee. The  
55 oversight fee shall be drawn from and calculated as a uniform percentage of the per student  
56 operational funding allocated to each public charter school under §18-5G-12 of this code, not to  
57 exceed one percent of each public charter school's per-student funding in a single school year.  
58 The state board shall establish a statewide formula for authorizer funding, which shall apply  
59 uniformly to every authorizer in the state. The state board may establish a sliding scale for  
60 authorizing funding, with the funding percentage decreasing after the authorizer has achieved a  
61 certain threshold, such as after a certain number of schools have been authorized or after a  
62 certain number of students are enrolled in the authorizer's public charter schools. The state board  
63 shall establish a cap on the total amount of funding that an authorizer may withhold from a full-

64 time charter school. The state board shall annually review the effectiveness of the state formula  
65 for authorizer funding and shall adjust the formula if necessary to maximize public benefit and  
66 strengthen the implementation of this act.

**§18-5G-7. Charter contract requirements; term of contract.**

1       (a) Within 90 days of the approval of a charter application, the governing board and the  
2 authorizer shall negotiate and enter into a charter contract.

3       (b) The charter contract shall address, in detail, the following items:

4           (1) The term of the contract: *Provided*, That the contract term shall be no longer than five  
5 years;

6           (2) The agreements relating to each item required under §18-5G-5(b) and §18-5G-5(c) of  
7 this code;

8           (3) The rights and duties of the authorizer and the public charter school;

9           (4) The administrative relationship between the authorizer and the public charter school;

10           (5) The process the authorizer will use to provide ongoing oversight;

11           (6) The specific commitments of the authorizer relating to its obligations to oversee,  
12 monitor the progress of, and supervise the public charter school;

13           (7) The process and criteria the authorizer will use to annually monitor and evaluate the  
14 overall academic, operating, and fiscal conditions of the public charter school, including the  
15 process the authorizer will use to oversee the correction of any deficiencies found;

16           (8) The process for revision or amendment to the terms of the charter contract agreed to  
17 by the authorizer and the governing board;

18           (9) The process agreed to by the authorizer and the governing board that identifies how  
19 disputes between the authorizer and the board will be handled; and

20           (10) Any other terms and conditions agreed to by the authorizer and the governing board,  
21 including preopening conditions.

22       (c) The charter contract shall include provisions relating to the performance of the public

23 charter school that set forth the academic and operational performance indicators, measures, and  
24 metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the  
25 performance provisions shall include indicators, measures, and metrics for:

26 (1) Student academic proficiency;

27 (2) Student academic growth;

28 (3) Achievement gaps in both student proficiency and student growth between student  
29 subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

30 (4) Student attendance;

31 (5) Student suspensions;

32 (6) Student withdrawals;

33 (7) Recurrent enrollment from year to year;

34 (8) Governing board's performance and stewardship, including compliance with all  
35 applicable statutes and terms of charter contract; and

36 (9) Additional valid and reliable indicators requested by the public charter school.

37 (d) The authorizer shall be responsible for collecting and reporting to the state board all  
38 state-required assessment and achievement data for the public charter school.

39 (e) The charter contract shall be signed by the chair of the governing board and the  
40 president of the county board, presidents of the county boards, as applicable, or by the chairman  
41 of the West Virginia Public Charter School Commission for the charter schools for which the  
42 Commission is serving as the authorizer.

43 (f) No public charter school may commence operations without a charter contract that  
44 meets the requirements of this section, has been properly executed, and has been approved by  
45 the county board.

46 (g) A copy of the charter contract shall be provided to the State Superintendent of Schools.

**§18-5G-8. Renewal or nonrenewal of charter contracts; revocation of charter contracts;**  
**rulemaking; right to appeal.**

1                   (a) A charter contract may be renewed by the authorizer for a term of no more than five  
2 years. Authorizers may grant renewal with specific conditions for necessary improvements in the  
3 public charter school: *Provided, That any specific condition imposed does not contradict the terms*  
4 *of this article.*

5                   (b) The State Board of Education shall promulgate a rule establishing the process for  
6 renewing or not renewing a charter contract. At a minimum, this rule shall include:

7                   (1) A timeline for a governing board to submit an application for renewal to an authorizer;

8                   (2) The information that must be included in an application for renewal;

9                   (3) If the authorizer initially determines to deny a renewal application:

10                   (A) Notification requirements to the governing board about the prospect of nonrenewal  
11 and the reasons for possible closure of the public charter school;

12                   (B) An opportunity and timeframe for the governing board to provide a response to the  
13 notice of the nonrenewal;

14                   (C) An opportunity for the governing board to submit documentation and provide testimony  
15 as to why the charter contract should be renewed; and

16                   (D) An opportunity for a recorded public hearing, at the request of the governing board;

17                   (4) That the authorizer shall consider the governing board's response, testimony, and  
18 documentation, as well as the recorded public hearing, prior to rendering a final decision on the  
19 nonrenewal of the charter contract;

20                   (5) The information that must be included in the authorizer's final decision if it determines  
21 to deny a renewal application;

22                   (6) A timeline for an authorizer to render a final decision on whether or not to revoke a  
23 charter contract;

24                   (7) Approval of the authorizer's decision shall be adopted by the county board or boards,  
25 or by the West Virginia Public Charter School Commission, during an open meeting; and

26                   (8) A provision that the failure of the authorizer to act on a renewal application within the

27     designated timeframes shall be deemed an approval of the renewal application.

28         (c) A charter contract shall not be renewed if the authorizer determines that the public

29     charter school has:

30         (1) Committed a material violation of any of the terms, conditions, standards, or

31     procedures required under this article or the charter contract, and has persistently failed to correct

32     the violation after fair and specific notice from the authorizer;

33         (2) Failed to meet or make significant progress toward the program performance

34     expectations identified in the charter contract;

35         (3) Failed to meet generally accepted standards of fiscal management, and has failed to

36     correct the violation after fair and specific notice from the authorizer; or

37         (4) Substantially violated any material provision of law from which the public charter school

38     was not exempted and has failed to correct the violation after fair and specific notice from the

39     authorizer.

40         (d) A charter contract shall include provisions for revoking the charter contract. At a

41     minimum, these provisions shall include:

42         (1) The information that must be included in the authorizer's initial decision to revoke the

43     charter contract;

44         (2) Notification requirements to the governing board about the authorizer's initial decision

45     to revoke a charter contract and the reasons for the revocation;

46         (3) An opportunity and timeframe for the governing board to provide a response to the

47     authorizer's initial decision to revoke the charter contract;

48         (4) An opportunity for the governing board to submit documentation and provide testimony

49     as to why the charter contract should not be revoked;

50         (5) An opportunity for a recorded public hearing, at the request of the governing board;

51         (6) That the authorizer shall consider the governing board's response, testimony, and

52     documentation, as well as the recorded public hearing, prior to rendering a final decision on the

53 revocation of the charter contract:

54       (7) The information that must be included in the authorizer's final decision if it determines  
55 to revoke the charter contract:

56       (8) A timeline for an authorizer to render a final decision on whether or not to revoke a  
57 charter contract:

58       (9) Approval of the authorizer's decision shall be adopted during an open meeting; and

59       (10) A provision that the failure of the authorizer to act on a renewal application within the  
60 designated timeframes shall be deemed.

61       (e) Notwithstanding the process set forth in §18-5G-8(d) of this code, an authorizer shall  
62 take immediate action to revoke a charter contract if the health and safety of students attending  
63 the public charter school is threatened.

64       (f) An authorizer shall develop a public charter school closure protocol or protocol for  
65 transitioning a charter school to noncharter public school status. The protocol shall ensure timely  
66 notification to parents, orderly transition of students and student records to new schools when  
67 applicable, and proper disposition of school funds, property, and assets. The protocol shall specify  
68 tasks, timelines, and responsible parties, including delineating the respective duties of the public  
69 charter school and the authorizer. If a public charter school closes or transitions to noncharter  
70 public school status for any reason, the authorizer shall oversee and work with the closing or  
71 transitioning school to ensure a smooth and orderly closure or transition and transition for students  
72 and parents, as guided by the closure or school transition protocol. If a public charter school is  
73 subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-10 of  
74 this code, an authorizer may remove at will at any time any or all of the members of the board of  
75 directors of the public charter school in connection with ensuring a smooth and orderly closure or  
76 transition. If the authorizer removes members of the board of directors such that the board of  
77 directors can no longer function, the authorizer shall be empowered to take any further necessary  
78 and proper acts connected with closure or transition of the public charter school in the name and

79 interest of the public charter school.

**§18-5G-9. West Virginia Public Charter School Commission; members; appointments; meetings.**

1       (a) There is hereby created the West Virginia Public Charter School Commission which  
2       shall report directly to and be responsible to the state board, separate from the Department of  
3       Education, for carrying out its duties in accordance with this article. The mission of the  
4       Commission is to assist county boards in the authorization of high-quality public charter schools  
5       throughout the state that provide more options for students to attain a thorough and efficient  
6       education, particularly through schools designed to expand the opportunities for at-risk students.  
7       The commission and public charter schools authorized in accordance with this article are subject  
8       to the general supervision of the state board solely for the purposes of accountability for meeting  
9       the standards for student performance required of other public school students under §18-2E-5  
10       of this code. Except as otherwise authorized in this article, no other governmental agency or  
11       entity may assume any charter authorizing function or duty in any form.

12       (b) The commission shall consist of seven voting members, as follows:

13           (1) The State Superintendent of Schools, or designee;  
14           (2) The Chancellor of the Higher Education Policy Commission, or designee;  
15           (3) The Chancellor for Community and Technical College Education, or designee; and  
16           (4) Four members appointed by the Governor, with the advice and consent of the Senate.  
17           (c) The chair of the House Committee on Education and the chair of the Senate Committee  
18       on Education shall serve as nonvoting ex officio members of the commission.

19           (d) Each appointed member shall represent the public interest and must satisfy the  
20       following requirements:

21           (1) Be a citizen of the state;  
22           (2) Possess experience and expertise in public or nonprofit governance, management and  
23       finance, public school leadership, assessment, curriculum or instruction, or public education law;

24 and

25 (3) Have demonstrated an understanding of, and commitment to, charter schooling as a  
26 strategy for strengthening public education.

27 (e) No more than three of the appointed members of the commission may be of the same  
28 political party. No more than two of the appointed members may be residents of the same  
29 congressional district. No person may be appointed who holds any other public office or public  
30 employment under the government of this state or any of its political subdivisions, or who is an  
31 appointee or employee of any charter school governing board or an immediate family member of  
32 an employee under the jurisdiction of the commission or any charter school governing board. No  
33 person may be appointed who is engaged in, or employed by a person or company whose primary  
34 function involves, the sale of services and activities to public charter schools or charter school  
35 governing boards.

36 (f) The initial appointments made pursuant to this section shall be for staggered one- and  
37 two-year terms. Thereafter, all appointments shall be for a term of two years. The initial  
38 appointments shall be made before February 1, 2020. The commission shall meet as soon as  
39 practical after February 1, 2020, upon the call of the Governor, and shall organize for business  
40 by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the  
41 chairman.

42 (g) An appointed member of the commission may be removed from office by the Governor  
43 for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also  
44 be removed if the member's personal incapacity renders the member incapable or unfit to  
45 discharge the duties of the office or if the member is absent from a number of meetings of the  
46 commission as determined and specified by the commission in its bylaws. Whenever an  
47 appointed member vacancy on the commission exists, the Governor shall appoint, with the advice  
48 and consent of the Senate, a qualified person for the remainder of the vacated term.

49 (h) Except in the case of gross negligence or reckless disregard of the safety and well-

50 being of another person, the commission and members of the commission in their official capacity  
51 are immune from civil liability with respect to all activities related to a public charter school  
52 approved by the commission. The official actions of the members of the commission who are  
53 serving in an ex officio capacity by virtue of their designation or employment in another position  
54 are commission member actions only, and may not be construed as official actions or positions  
55 of such member's employing entity.

56       (i) The commission may appoint an executive director and may employ such additional  
57 staff as may be necessary. The executive director shall serve at the will and pleasure of the  
58 commission. The executive director must demonstrate an understanding of and commitment to  
59 charter schooling as a strategy for strengthening public education and must possess an  
60 understanding of state and federal education law.

61       (j) The commission shall meet as needed, but at least bi-annually. From funds  
62 appropriated or otherwise made available for such purpose, its members shall be reimbursed for  
63 reasonable and necessary expenses actually incurred in the performance of official duties upon  
64 submission of an itemized statement in a manner consistent with guidelines of the Travel  
65 Management Office of the Department of Administration.

#### **§18-5G-10. Prohibitions.**

1       Notwithstanding any provision in this article that may be interpreted to the contrary, a  
2 public charter school may not:  
3       (1) Be home-school based; and  
4       (2) Discriminate on any basis for which the noncharter public schools of this state may  
5 not discriminate: Provided, That nothing in this subsection may be construed to limit the formation  
6 of a public charter school that is dedicated to focusing education services on at-risk students,  
7 students with disabilities, and students who pose such severe disciplinary problems that they  
8 warrant a specific education program.

#### **§18-5G-11. State board rule relating to funding for charter school enrollment and other**

necessary provisions.

1       (a) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this  
2 code setting forth requirements for public charter school funding. The rule shall include a  
3 requirement that 90 percent of the per pupil total basic foundation allowance follow the student to  
4 the public charter school, subject to the following:

5               (1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications  
6 to the calculations outlined in §18-9A-7 regarding the allowance for student transportation and in  
7 §18-9A-9(1) regarding the allowance for current expense for the purpose of providing additional  
8 state aid funding to county boards of education related to the operation of public charter schools;  
9               (2) The rule shall designate which county school district is required to pay for a student  
10 attending a public charter school; and

11               (3) The rule shall require the Department of Education to follow federal requirements in  
12 ensuring that federal funding follows the student to a public charter school.

13               (b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this  
14 code to clarify, if necessary, the requirements of this article and address any unforeseen issues  
15 that might arise relating to the implementation of the requirements of this article.

16               (c) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this  
17 code, if necessary, for ensuring the accountability of public charter schools for meeting the  
18 standards for student performance required of other public school students under §18-2E-5 of  
19 this code and the accountability of authorizers for ensuring that those standards are met in the  
20 schools authorized by it. If an authorizer fails to close a charter school that does not meet the  
21 standards, the authorizer shall appear before the State Board to justify its decision. The State  
22 Board may uphold or overturn the authorizer's decision and may revoke the authority of the  
23 authorizer to authorize charter schools.

§18-5G-12. Access to public facilities.

1       (a) A public charter school may request usage of public facilities from a local county board  
2       where the charter school is located. A local county board or other public entity shall make facilities  
3       available for use or lease to the charter school that are not currently in use as an operating  
4       public school or which are available at the time the charter school seeks to use in whole or in part  
5       for a legitimate public school use.

8       (c) During the term of the lease, the charter school is solely responsible for the direct  
9       expenses related to the public facility lease, including utilities, insurance, maintenance, repairs  
10      and remodeling. The county school board is responsible for any debt incurred or liens that are  
11      attached to the school building before the charter school leases the public facility.

**§18-5G-13. Reports.**

1        (a) An authorizer that has authorized a public charter school that is currently in operation  
2        shall submit to the state superintendent for presentation to the state board an annual report within  
3        60 days of the end of each school fiscal year summarizing:

4        (1) The performance of the public charter schools overseen by the authorizer, according  
5        to the performance measures and expectations specified in the charter contracts;  
6        (2) The authorizing duties and functions provided by the authorizer during the previous  
7        academic year.

15 state law or policy necessary to strengthen the public charter school program.

## ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.

### §18-7A-3. Definitions.

1 As used in this article, unless the context clearly requires a different meaning:

2 (1) "Accumulated contributions" means all deposits and all deductions from the gross  
3 salary of a contributor plus regular interest.

4 (2) "Accumulated net benefit" means the aggregate amount of all benefits paid to or on  
5 behalf of a retired member.

6 (3) "Actuarially equivalent" or "of equal actuarial value" means a benefit of equal value  
7 computed upon the basis of the mortality table and interest rates as set and adopted by the  
8 retirement board in accordance with the provisions of this article: *Provided*, That when used in  
9 the context of compliance with the federal maximum benefit requirements of Section 415 of the  
10 Internal Revenue Code, "actuarially equivalent" shall be computed using the mortality tables and  
11 interest rates required to comply with those requirements.

12 (4) "Annuities" means the annual retirement payments for life granted beneficiaries in  
13 accordance with this article.

14 (5) "Average final salary" means the average of the five highest fiscal year salaries earned  
15 as a member within the last 15 fiscal years of total service credit, including military service as  
16 provided in this article, or if total service is less than 15 years, the average annual salary for the  
17 period on which contributions were made: *Provided*, That salaries for determining benefits during  
18 any determination period may not exceed the maximum compensation allowed as adjusted for  
19 cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal  
20 Revenue Code.

21 (6) "Beneficiary" means the recipient of annuity payments made under the retirement  
22 system.

23 (7) "Contributor" means a member of the retirement system who has an account in the

24 teachers accumulation fund.

25 (8) "Deposit" means a voluntary payment to his or her account by a member.

26 (9) "Employer" means the agency of and within the state which has employed or employs

27 a member.

28 (10) "Employer error" means an omission, misrepresentation, or violation of relevant  
29 provisions of the West Virginia Code or of the West Virginia Code of State Regulations or the  
30 relevant provisions of both the West Virginia Code and of the West Virginia Code of State  
31 Regulations by the participating public employer that has resulted in an underpayment or  
32 overpayment of contributions required. A deliberate act contrary to the provisions of this section  
33 by a participating public employer does not constitute employer error.

34 (11) "Employment term" means employment for at least 10 months, a month being defined  
35 as 20 employment days.

36 (12) "Gross salary" means the fixed annual or periodic cash wages paid by a participating  
37 public employer to a member for performing duties for the participating public employer for which  
38 the member was hired. Gross salary shall be allocated and reported in the fiscal year in which the  
39 work was done. Gross salary also includes retroactive payments made to a member to correct a  
40 clerical error, or made pursuant to a court order or final order of an administrative agency charged  
41 with enforcing federal or state law pertaining to the member's rights to employment or wages, with  
42 all retroactive salary payments to be allocated to and considered paid in the periods in which the  
43 work was or would have been done. Gross salary does not include lump sum payments for  
44 bonuses, early retirement incentives, severance pay or any other fringe benefit of any kind  
45 including, but not limited to, transportation allowances, automobiles or automobile allowances, or  
46 lump sum payments for unused, accrued leave of any type or character.

47 (13) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been  
48 amended.

49 (14) "Member" means any person who has accumulated contributions standing to his or

50 her credit in the state Teachers Retirement System. A member shall remain a member until the  
51 benefits to which he or she is entitled under this article are paid or forfeited, or until cessation of  
52 membership pursuant to §18-7A-13 of this code.

53 (15) "Members of the administrative staff of the public schools" means deans of instruction,  
54 deans of men, deans of women, and financial and administrative secretaries.

55 (16) "Members of the extension staff of the public schools" means every agricultural agent,  
56 boys' and girls' club agent and every member of the agricultural extension staff whose work is not  
57 primarily stenographic, clerical, or secretarial.

58 (17) "New entrant" means a teacher who is not a present teacher.

59 (18) "Nonteaching member" means any person, except a teacher member, who is  
60 regularly employed for full-time service by: (A) Any county board of education; (B) the State Board  
61 of Education; (C) the Higher Education Policy Commission; (D) the West Virginia Council for  
62 Community and Technical College Education; or (E) a governing board, as defined in §18B-1-2  
63 of this code; or (F) a public charter school established pursuant to §18-5G-1 et seq. of this code  
64 if the charter school includes in its approved charter application a determination to participate in  
65 the retirement systems under this article and §18-7B-1 et seq. of this code, subject to the  
66 provisions of §18-7B-7a of this code; *Provided*, That any person whose employment with the  
67 Higher Education Policy Commission, the West Virginia Council for Community and Technical  
68 College Education or a governing board commences on or after July 1, 1991, is not considered a  
69 nonteaching member.

70 (19) "Plan year" means the 12-month period commencing on July 1 and ending the  
71 following June 30 of any designated year.

72 (20) "Present member" means a present teacher or nonteacher who is a member of the  
73 retirement system.

74 (21) "Present teacher" means any person who was a teacher within the 35 years beginning  
75 July 1, 1934, and whose membership in the retirement system is currently active.

(22) "Prior service" means all service as a teacher completed prior to July 1, 1941, and all service of a present member who was employed as a teacher, and did not contribute to a retirement account because he or she was legally ineligible for membership during the service.

(23) "Public schools" means all publicly supported schools, including colleges and universities in this state.

(24) "Refund beneficiary" means the estate of a deceased contributor or a person he or she nominated as beneficiary of his or her contributions by written designation duly executed and filed with the retirement board.

(25) "Regular interest" means interest at four percent compounded annually, or a higher rate if set forth in the formula established in legislative rules, series seven of the  
Validated Public Retirement Board, 162 CSR 7.

(26) "Regularly employed for full-time service" means employment in a regular position or throughout the employment term regardless of the number of hours worked or the method of

(27) "Required beginning date" means April 1 of the calendar year following the later of:  
• calendar year in which the member attains age 70 and one-half years; or (B) the calendar  
which the member retires or ceases covered employment under the system after having  
• the age of 70 and one-half years.

(28) "Retirant" means any member who commences an annuity payable by the retirement

(29) "Retirement board" means the Consolidated Public Retirement Board created pursuant to §5-10D-1 *et seq.* of this code.

(30) "Retirement system" means the state Teachers Retirement System established by article.

(31) "Teacher member" means the following persons, if regularly employed for full-time  
(A) Any person employed for instructional service in the public schools of West Virginia;

102 (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county  
103 superintendents of schools; (E) any county school attendance director holding a West Virginia  
104 teacher's certificate; (F) members of the research, extension, administrative, or library staffs of  
105 the public schools; (G) the State Superintendent of Schools, heads, and assistant heads of the  
106 divisions under his or her supervision, or any other employee under the State Superintendent  
107 performing services of an educational nature; (H) employees of the State Board of Education who  
108 are performing services of an educational nature; (I) any person employed in a nonteaching  
109 capacity by the State Board of Education, any county board of education, the State Department  
110 of Education or the State Teachers Retirement Board, if that person was formerly employed as a  
111 teacher in the public schools; (J) all classroom teachers, principals, and educational  
112 administrators in schools under the supervision of the Division of Corrections and Rehabilitation,  
113 the Division of Health or the Division of Human Services; (K) an employee of the State Board of  
114 School Finance, if that person was formerly employed as a teacher in the public schools; and (L)  
115 any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 *et seq.* of this  
116 code who elects to remain a member of the State Teachers Retirement System provided in this  
117 article; and (M) any person employed by a public charter school established pursuant to §18-5G-  
118 1 *et seq.* of this code if the charter school includes in its approved charter application a  
119 determination to participate in the retirement systems under this article and §18-7B-1 *et seq.* of  
120 this code, subject to the provisions of §18-7B-7a of this code.

121 (32) "Total service" means all service as a teacher or nonteacher while a member of the  
122 retirement system since last becoming a member and, in addition thereto, credit for prior service,  
123 if any.

124 Age in excess of 70 years shall be considered to be 70 years.

## **ARTICLE 7B. TEACHERS' DEFINED CONTRIBUTION RETIREMENT SYSTEM.**

### **§18-7B-2. Definitions.**

1 As used in this article, unless the context clearly requires a different meaning:

(1) "Annual addition" means, for purposes of the limitations under Section 415(c) of the Internal Revenue Code, the sum credited to a member's account for any limitation year of: (A) employer contributions; (B) employee contributions; and (C) forfeitures. Repayment of cashouts, contributions as described in Section 415(k)(3) of the Internal Revenue Code, rollover contributions and picked-up employee contributions to a defined benefit plan shall not be treated as annual additions, consistent with the requirements of Treasury Regulation §1.415(c)-1;

(2) "Annuity account" or "annuity" means an account established for each member to the deposit of member contributions and employer contributions and interest, dividends or accumulations credited on behalf of the member;

(3) "Compensation" means the full compensation actually received by members for service or not a part of the compensation is received from other funds, federal or otherwise, than provided by the state or its subdivisions: *Provided*, That annual compensation for members contributions during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and §401(a)(17) of the Internal Revenue Code: *Provided, however*, That solely for purposes of applying the limitations of Section 415 of the Internal Revenue Code to any annual addition, "compensation" has the meaning given it in §18-7B-13(d) of this code:

(4) "Consolidated board" or "board" means the Consolidated Public Retirement Board and established pursuant to §5-10D-1 *et seq.* of this code;

(5) "Defined contribution system" or "system" means the Teachers' Defined Contribution System created and established by this article;

(6) "Employer" means the agency of and within the State of West Virginia which has  
ed or employs a member;

(7) "Employer contribution" means an amount deposited into the member's individual account on a periodic basis coinciding with the employee's regular pay period by an employer from its own funds;

(8) "Employment term" means employment for at least 10 months in any plan year with a month being defined as 20 employment days;

(9) "Existing employer" means any employer who employed or employs a member of the system;

(10) "Existing retirement system" means the State Teachers Retirement System established in §18B-7A-1 *et seq.* of this code;

(11) "Internal Revenue Code" means the Internal Revenue Code of 1986, as it has been amended:

(12) "Member" or "employee" means the following persons, if regularly employed for full-time service: (A) Any person employed for instructional service in the public schools of West Virginia; (B) principals; (C) public school librarians; (D) superintendents of schools and assistant county superintendents of schools; (E) any county school attendance director holding a West Virginia teacher's certificate; (F) members of the research, extension, administrative, or library staffs of the public schools; (G) the State Superintendent of Schools, heads and assistant heads of the divisions under his or her supervision or any other employee under the state superintendent performing services of an educational nature; (H) employees of the State Board of Education who are performing services of an educational nature; (I) any person employed in a nonteaching capacity by the State Board of Education, any county board of education or the State Department of Education, if that person was formerly employed as a teacher in the public schools; (J) all classroom teachers, principals, and educational administrators in schools under the supervision of the Division of Corrections and the Department of Health and Human Resources; (K) any person who is regularly employed for full-time service by any county board of education or the State Board of Education; (L) the administrative staff of the public schools including deans of instruction, deans of men and deans of women, and financial and administrative secretaries; and (M) any person designated as a 21st Century Learner Fellow pursuant to §18A-3-11 of this code who elects to remain a member of the Teachers' Defined Contribution

54 Retirement System established by this article; and (N) any person employed by a public charter  
55 school established pursuant to §18-5G-1 *et seq.* of this code if the charter school includes in its  
56 approved charter application a determination to participate in the retirement systems under this  
57 article, subject to the provisions of §18-7B-7a and §18-7A-1 *et seq.* of this code;

58 (13) "Member contribution" means an amount reduced from the employee's regular pay  
59 periods, and deposited into the member's individual annuity account within the Teachers' Defined  
60 Contribution Retirement System;

61 (14) "Permanent, total disability" means a mental or physical incapacity requiring absence  
62 from employment service for at least six months: *Provided*, That the incapacity is shown by an  
63 examination by a physician or physicians selected by the board: *Provided, however*, That for  
64 employees hired on or after July 1, 2005, "permanent, total disability" means an inability to engage  
65 in substantial gainful activity by reason of any medically determinable physical or mental  
66 impairment that can be expected to result in death, or has lasted or can be expected to last for a  
67 continuous period of not less than 12 months and the incapacity is so severe that the member is  
68 likely to be permanently unable to perform the duties of the position the member occupied  
69 immediately prior to his or her disabling injury or illness;

70 (15) "Plan year" means the 12 month period commencing on July 1 of any designated year  
71 and ending on the following June 30;

72 (16) "Public schools" means all publicly supported schools, including normal schools,  
73 colleges and universities in this state;

74 (17) "Regularly employed for full-time service" means employment in a regular position or  
75 job throughout the employment term regardless of the number of hours worked or the method of  
76 pay;

77 (18) "Required beginning date" means April 1 of the calendar year following the later of:  
78 (A) The calendar year in which the member attains age 70 and one-half years; or (B) the calendar  
79 year in which the member retires or otherwise ceases employment with a participating employer

80 after having attained the age of 70 and one-half years;

81 (19) "Retirement" means a member's withdrawal from the active employment of a  
82 participating employer and completion of all conditions precedent to retirement;

83 (20) "Year of employment service" means employment for at least 10 months, with a month  
84 being defined as 20 employment days: *Provided*, That no more than one year of service may be  
85 accumulated in any 12 month period.

## **ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.**

### **§18-8-4. Duties of attendance director and assistant directors; complaints, warrants and hearings.**

1 (a) The county attendance director and the assistants shall diligently promote regular  
2 school attendance. The director and assistants shall:

3 (1) Ascertain reasons for unexcused absences from school of students of compulsory  
4 school age and students who remain enrolled beyond the compulsory school age as defined  
5 under section one-a of this article;

6 (2) Take such steps as are, in their discretion, best calculated to encourage the attendance  
7 of students and to impart upon the parents and guardians the importance of attendance and the  
8 seriousness of failing to do so; and

9 (3) For the purposes of this article, the following definitions shall apply:

10 (A) "Excused absence" shall be defined to include:

11 (i) Personal illness or injury of the student or in the family;

12 (ii) Personal illness or injury of the student's parent, guardian, custodian, or family  
13 member: *Provided*, That the excuse must provide reasonable explanation for why the student's  
14 absence was necessary and caused by the illness or injury in the family;

15 (iii) Medical or dental appointment with written excuse from physician or dentist;

16 (iv) Chronic medical condition or disability that impacts attendance;

(v) Participation in home or hospital instruction due to an illness or injury or other ordinary circumstance that warrants home or hospital confinement;

(vi) Calamity, such as a fire or flood;

(vii) Death in the family;

(viii) School-approved or county-approved curricular or extra-curricular activities;

(ix) Judicial obligation or court appearance involving the student;

(x) Military requirement for students enlisted or enlisting in the military;

(xi) Personal or academic circumstances approved by the principal; and

(xii) Such other situations as may be further determined by the county board: *Provided*,

26 That absences of students with disabilities shall be in accordance with the Individuals with  
27 Disabilities Education Improvement Act of 2004 and the federal and state regulations adopted in  
28 compliance therewith.

(B) "Unexcused absence" shall be any absence not specifically included in the definition of "excused absence".

(b) In the case of three total unexcused absences of a student during a school year, the attendance director, or assistant, or principal shall serve written notice to the parent, guardian or legal guardian of the student that the attendance of the student at school is required and that if the student has five unexcused absences, a conference with the principal or other designated representative will be required. make meaningful contact with the parent, guardian, or custodian student to ascertain the reasons for the unexcused absences and what measures the school may employ to assist the student in attending and not incurring any additional unexcused absences.

(c) In the case of five total unexcused absences, the attendance director or assistant, or

principal shall serve written notice to the parent, guardian or custodian of the student that within five days of receipt of the notice the parent, guardian or custodian, accompanied by the student, shall report in person to the school the student attends for a conference with the principal or other

43 designated representative of the school in order to discuss and correct the circumstances causing  
44 the unexcused absences of the student, including the adjustment of unexcused absences based  
45 upon such meeting. again make meaningful contact with the parent, guardian, or custodian of the  
46 student to ascertain the reasons for the unexcused absences and what measures the school may  
47 employ to assist the student in attending school and not incurring any additional unexcused  
48 absences. Such measures may include, with approval of the principal, reducing the number of  
49 unexcused absences.

50 (d) In the case of 10 total unexcused absences of a student during a school year, the  
51 attendance director or assistant shall make a complaint against the parent, guardian, or custodian  
52 before a magistrate of the county. If it appears from the complaint that there is probable cause to  
53 believe that an offense has been committed and that the accused has committed it, a summons  
54 or a warrant for the arrest of the accused shall issue to any officer authorized by law to serve the  
55 summons or to arrest persons charged with offenses against the state. More than one parent,  
56 guardian, or custodian may be charged in a complaint. Initial service of a summons or warrant  
57 issued pursuant to the provisions of this section shall be attempted within 10 calendar days of  
58 receipt of the summons or warrant and subsequent attempts at service shall continue until the  
59 summons or warrant is executed or until the end of the school term during which the complaint is  
60 made, whichever is later.

61 (e) The magistrate court clerk, or the clerk of the circuit court performing the duties of the  
62 magistrate court as authorized in §50-1-8 of this code, shall assign the case to a magistrate within  
63 10 days of execution of the summons or warrant. The hearing shall be held within 20 days of the  
64 assignment to the magistrate, subject to lawful continuance. The magistrate shall provide to the  
65 accused at least 10 days' advance notice of the date, time, and place of the hearing.

66 (f) When any doubt exists as to the age of a student absent from school, the attendance  
67 director and assistants have authority to require a properly attested birth certificate or an affidavit  
68 from the parent, guardian, or custodian of the student, stating age of the student. In the

69 performance of his or her duties, the county attendance director and assistants have authority to  
70 take without warrant any student absent from school in violation of the provisions of this article  
71 and to place the student in the school in which he or she is or should be enrolled.

72 (g) The county attendance director and assistants shall devote such time as is required  
73 by section three of this article to the duties of attendance director in accordance with this section  
74 during the instructional term and at such other times as the duties of an attendance director are  
75 required. All attendance directors and assistants hired for more than 200 days may be assigned  
76 other duties determined by the superintendent during the period in excess of 200 days. The county  
77 attendance director is responsible under direction of the county superintendent for efficiently  
78 administering school attendance in the county.

79 (h) In addition to those duties directly relating to the administration of attendance, the  
80 county attendance director and assistant directors also shall perform the following duties:

81 (1) Assist in directing the taking of the school census to see that it is taken at the time and  
82 in the manner provided by law;  
83 (2) Confer with principals and teachers on the comparison of school census and  
84 enrollment for the detection of possible nonenrollees;  
85 (3) Cooperate with existing state and federal agencies charged with enforcing child labor  
86 laws;

87 (4) Prepare a report for submission by the county superintendent to the State  
88 Superintendent of Schools on school attendance, at such times and in such detail as may be  
89 required. The state board shall promulgate a legislative rule pursuant to §29A-3B-1 et seq. of this  
90 code that sets forth student absences that are excluded for accountability purposes. The  
91 absences that are excluded by the rule include, but are not limited to, excused student absences,  
92 students not in attendance due to disciplinary measures, and absent students for whom the  
93 attendance director has pursued judicial remedies to compel attendance to the extent of his or  
94 her authority. The attendance director shall file with the county superintendent and county board

95 at the close of each month a report showing activities of the school attendance office and the  
96 status of attendance in the county at the time;

97 (5) Promote attendance in the county by compiling data for schools and by furnishing  
98 suggestions and recommendations for publication through school bulletins and the press, or in  
99 such manner as the county superintendent may direct;

100 (6) Participate in school teachers' conferences with parents and students;

101 (7) Assist in such other ways as the county superintendent may direct for improving school  
102 attendance;

103 (8) Make home visits of students who have excessive unexcused absences, as provided  
104 above, or if requested by the chief administrator, principal, or assistant principal; and

105 (9) Serve as the liaison for homeless children and youth.

## ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

### §18-9A-2. Definitions.

1 For the purpose of this article:

2 (a) "State board" means the West Virginia Board of Education.

3 (b) "County board" or "board" means a county board of education.

4 (c) "Professional salaries" means the state legally mandated salaries of the professional  
5 educators as provided in §18-4-1 *et seq.* of this code.

6 (d) "Professional educator" shall be synonymous with and shall have the same meaning  
7 as "teacher" as defined in §18-1-1 of this code, and includes technology integration specialists.

8 (e) "Professional instructional personnel" means a professional educator whose regular  
9 duty is as that of a classroom teacher, librarian, attendance director, or school psychologist. A  
10 professional educator having both instructional and administrative or other duties shall be  
11 included as professional instructional personnel for that ratio of the school day for which he or she  
12 is assigned and serves on a regular full-time basis in appropriate instruction, library, attendance,  
13 or psychologist duties.

14 (f) "Professional student support personnel" means a "teacher" as defined in §18-1-1 of  
15 this code who is assigned and serves on a regular full-time basis as a counselor or as a school  
16 nurse with a bachelor's degree and who is licensed by the West Virginia Board of Examiners for  
17 Registered Professional Nurses. Professional student support personnel shall also include  
18 professional personnel providing direct social and emotional support services to students,  
19 including but not limited to, social workers and psychologists. For all purposes except for the  
20 determination of the allowance for professional educators pursuant to section four of this article,  
21 professional student support personnel are professional educators.

22 (g) "Service personnel salaries" means the state legally mandated salaries for service  
23 personnel as provided in §18A-4-8a of this code.

24 (h) "Service personnel" means all personnel as provided in §18A-4-8 of this code. For the  
25 purpose of computations under this article of ratios of service personnel to net enrollment, a  
26 service employee shall be counted as that number found by dividing his or her number of  
27 employment days in a fiscal year by 200: Provided, That the computation for any service person  
28 employed for three and one-half hours or less per day as provided in §18A-4-8a of this code shall  
29 be calculated as one half an employment day.

30 (i) "Net enrollment" means the number of pupils enrolled in special education programs,  
31 kindergarten programs, and grades one to twelve, inclusive, of the public schools of the county.  
32 Net enrollment further shall include:

33 (1) Adults enrolled in regular secondary vocational programs existing as of the effective  
34 date of this section, subject to the following:

35 (A) Net enrollment includes no more than 1,000 2,500 of those adults counted on the basis  
36 of full-time equivalency and apportioned annually to each county to support Advanced Career  
37 Education programs, as provided in §18-2E-11 of this code, in proportion to the adults  
38 participating in regular secondary vocational programs in the prior year counted on the basis of  
39 full-time equivalency: *Provided*, That beginning with the 2021 fiscal year and every year

40 thereafter, a career technical education center may only receive the funding for enrollment as  
41 authorized by this paragraph if the center has satisfied the requirements of §18-2E-11 of this  
42 code; and

43 (B) Net enrollment does not include any adult charged tuition or special fees beyond that  
44 required of the regular secondary vocational student;

45 (2) Students enrolled in early childhood education programs as provided in §18-5-44 of  
46 this code, counted on the basis of full-time equivalency;

47 (3) ~~No pupil shall~~ A pupil may not be counted more than once by reason of transfer within  
48 the county or from another county within the state, and no pupil shall be counted who attends  
49 school in this state from another state;

50 (4) The enrollment shall be modified to the equivalent of the instructional term and in  
51 accordance with the eligibility requirements and rules established by the state board; and

52 (5) ~~For the purposes of determining the county's basic foundation program only~~ For any  
53 county whose net enrollment as determined under all other provisions of this definition is less than  
54 1,400, the net enrollment of the county shall be increased by an amount to be determined in  
55 accordance with the following considered to be 1,400 for the purposes of determining the county's  
56 basic foundation program only. During the 2019-2020 interim period and every three interim  
57 periods thereafter, the Legislative Oversight Commission on Education Accountability shall review  
58 this subdivision to determine whether or not these provisions properly address the needs of  
59 counties with low enrollment and sparse population density.

60 (A) ~~Divide the state's lowest county student population density by the county's actual~~  
61 ~~student population density;~~

62 (B) ~~Multiply the amount derived from the calculation in paragraph (A) of this subdivision~~  
63 ~~by the difference between one thousand four hundred and the county's actual net enrollment;~~

64 (C) ~~If the increase in net enrollment as determined under this subdivision plus the county's~~  
65 ~~net enrollment as determined under all other provisions of this subsection is greater than one~~

66 thousand four hundred, the increase in net enrollment shall be reduced so that the total does not  
67 exceed one thousand four hundred; and

68 (D) During the 2008-2009 interim period and every three interim periods thereafter, the  
69 Legislative Oversight Commission on Education Accountability shall review this subdivision to  
70 determine whether or not these provisions properly address the needs of counties with low  
71 enrollment and a sparse population density.

72 (j) "Sparse-density county" means a county whose ratio of net enrollment, excluding any  
73 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this  
74 section, of the definition of "net enrollment", to the square miles of the county is less than five.

75 (k) "Low-density county" means a county whose ratio of net enrollment, excluding any  
76 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this  
77 section, of the definition of "net enrollment", to the square miles of the county is equal to or greater  
78 than five but less than 10.

79 (l) "Medium-density county" means a county whose ratio of net enrollment, excluding any  
80 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this  
81 section, of the definition of "net enrollment", to the square miles of the county is equal to or greater  
82 than 10 but less than 20.

83 (m) "High-density county" means a county whose ratio of net enrollment, excluding any  
84 increase in the net enrollment of counties, pursuant to subdivision (5), subsection (i) of this  
85 section, of the definition of "net enrollment", to the square miles of the county is equal to or greater  
86 than 20.

87 (n) "Levies for general current expense purposes" means 90 percent of the levy rate for  
88 county boards of education calculated or set by the Legislature as established in pursuant to §11-  
89 8-6f of this code. The levy rate shall be assumed to be the rate established in that section and  
90 not an increased rate established by a county board.

(o) "Technology integration specialist" means a professional educator who has expertise in the use of technology to support instruction and guidance.

(o) "Technology Integration":  
in the technology field and is assigned as a resource teacher to provide information and guidance  
the integration of technology into the curriculum.

(p) "State aid eligible personnel" means all professional educators and service personnel employed by a county board in positions that are eligible to be funded under this article and whose salaries are not funded by a specific funding source such as a federal or state grant, donation, contribution or other specific funding source not listed.

(q) The amendments to this section during the 2019 regular session of the Legislature  
be effective for school years beginning on or after July 1, 2019, and the provisions of this  
an existing immediately prior to the 2019 regular session of the Legislature remain in effect  
school years beginning prior to July 1, 2019.

**§18-9A-8. Foundation allowance for professional student support services.**

(c) The basic foundation allowance to the county for professional student support

1 (a) The basic foundation amount  
2 personnel shall be the amount of money determined in accordance with the following:  
3 (1) The sum of the state minimum salaries, as determined in accordance with the  
4 provisions of §18-4-1 *et seq* of this code, for all state aid eligible school nurse and counselor  
5 positions in the county during the 2008 fiscal year which number shall be reduced in the same  
6 proportion as the number of professional educators allowed to be funded under §18-9A-4 of this  
7 code to the total number of professional educators employed that are state aid eligible. In  
8 performing this calculation, the numerator shall be the number of professional educators actually  
9 funded under section four of this article and the denominator shall be the total number of  
10 professional educators employed that are eligible to be funded under §18-9A-4 of this code;  
11 (2) The amount derived from the calculation in §18-9A-8(a)(1) of this code is increased by  
12 one half percent;

(3) The amount derived from the calculation in §18-9A-8(a)(2) of this code is the basic  
allowance to the county for professional student support personnel for the 2009 fiscal

(4) For fiscal years 2010, 2011, 2012 and 2013, the basic foundation allowance to the for professional student support personnel increases by one-half percent per year over allowance for the previous year; and

(5) For all fiscal years thereafter until fiscal year 2020, the basic foundation allowance to county for professional student support personnel remains the same amount as in the 2013 year, plus any additional amount of funding necessary to cover the increases in the State Foundation Salary Schedule set forth in §18A-4-2 of this code effective for the fiscal year beginning 2018, and thereafter.

(b) The additional positions for counselors that may be created as a result of the one-time increase provided pursuant to this section shall be assigned to schools where the counselor can:

(1) Enhance student achievement;

(2) Provide early intervention for students in grades prekindergarten through five; and

(3) Enhance student development and career readiness.

(c) Effective for the 2019-20 fiscal year and thereafter, the basic foundation allowance to county for professional student support personnel is the amount of money required to pay the minimum salaries, in accordance with provisions of §18A-4-1 *et seq.* of this code, subject to the following:

(1) In making this computation, each county shall receive an allowance for four and one hundredths state aid eligible professional student support personnel positions to each student in net enrollment;

(2) For any professional student support personnel positions, or fraction thereof, defined for a county pursuant to §18-9A-8(c)(1) of this code that exceed the number

39     employed, the county's allowance for these positions shall be determined using the average state  
40     funded salary of professional student support personnel for the county;

41         (3) The number of and the allowance for all personnel paid in part by state and county  
42     funds shall be prorated; and

43         (4) Where two or more counties join together in support of a vocational or comprehensive  
44     high school or any other program or service, the professional student support personnel for the  
45     school or program may be prorated among the participating counties on the basis of each one's  
46     enrollment therein and the personnel shall be considered within the above-stated limit.

47         (5) For the 2019-20 fiscal year only, the number of positions funded for each county by  
48     subdivision (1) cannot be less than the number of positions that would have been funded in  
49     accordance with the previous methodology for determining the number of professional student  
50     support personnel positions funded for each county.

**§18-9A-9. Foundation allowance for other current expense and substitute employees and  
faculty senates.**

1         The total allowance for other current expense and substitute employees is the sum of the  
2     following:

3             (1) For current expense:

4                 (A) The non-salary related expenditures for operations and maintenance, exclusive of  
5     expenditures reported in special revenue funds, for the latest available school year, in each  
6     county, divided by the total square footage of school buildings in each county is used to calculate  
7     a state average expenditure per square foot for operations and maintenance;

8                 (B) The total square footage of school buildings in each county divided by each county's  
9     net enrollment for school aid purposes is used to calculate a state average square footage per  
10   student;

11                 (C) Each county's net enrollment for school aid purposes multiplied by the state average  
12   expenditure per square foot for operations and maintenance as calculated in paragraph (A) of this

13 subdivision and multiplied by the state average square footage per student as calculated in  
14 paragraph (B) of this subdivision is that county's state average costs per square footage per  
15 student for operations and maintenance;

16 (D) Where two or more counties join together in support of a vocational or comprehensive  
17 high school or any other program or service, the allowance for current expense may be prorated  
18 among the participating counties by adjusting the net enrollment for school aid purposes utilized  
19 in the calculation by the number of students enrolled therein for each county; and

20 (E) Each county's allowance for current expense is 70.25% of the county's state average  
21 costs per square footage per student for operations and maintenance amount as calculated in  
22 paragraph (C) of this subdivision: Provided, That effective July 1, 2019, each county's allowance  
23 for current expense is 71.25 percent of the county's state average costs per square footage per  
24 student for operations and maintenance amount as calculated in paragraph (c) of this subdivision;  
25 plus

26 (2) For professional educator substitutes or current expense, two and five-tenths percent  
27 of the computed state allocation for professional educators and professional student support  
28 personnel as determined in sections four and eight of this article. Distribution to the counties is  
29 made proportional to the number of professional educators and professional student support  
30 personnel authorized for the county in compliance with sections four and eight of this article; plus

31 (3) For service personnel substitutes or current expense, two and five-tenths percent of  
32 the computed state allocation for service personnel as determined in section five of this article.  
33 Distribution to the counties is made proportional to the number of service personnel authorized  
34 for the county in compliance with section five of this article; plus

35 (4) For academic materials, supplies, and equipment for use in instructional programs,  
36 \$200 multiplied by the number of professional instructional personnel and professional student  
37 support personnel employed in the schools of the county. Distribution is made to each county for  
38 allocation to the faculty senate of each school in the county on the basis of \$200 per professional

39 instructional personnel employed at the school. "Faculty Senate" means a faculty senate created  
40 pursuant to §18-5A-5 of this code. Decisions for the expenditure of such funds are made at the  
41 school level by the faculty senate in accordance with the provisions of said §18-5A-5 of this code  
42 and may not be used to supplant the current expense expenditures of the county. Beginning on  
43 September 1, 1994, and every September thereafter, county boards shall forward to each school  
44 for the use by faculty senates the appropriation specified in this section. Each school shall be  
45 responsible for keeping accurate records of expenditures.

**§18-9A-12. County basic foundation; total basic state aid allowance.**

17 (b) The allocated state aid share shall be adjusted in the following circumstances in the  
18 following manner: *Provided*. That prior to such adjustment, the State Tax Commissioner shall

19 provide the State Board, by January 15 of each year, a certified listing of those counties in which  
20 such adjustment shall be made pursuant to this subsection, together with the amount of revenue  
21 which will not be available to each county board in the ensuing fiscal year as a result of the  
22 circumstance:

23                   (1) In those instances where the local share as computed under §18-9A-11 of this code is  
24 not reflective of local funds available because the county is under a final court order, or a final  
25 decision of a board of assessment appeals under §11-3-24b of this code, to refund or credit  
26 property taxes paid in prior years, the allocated state aid share shall be the county's basic  
27 foundation program, minus the local share as computed under §18-9A-11 of this code, plus the  
28 amount of property tax the county is unable to collect or must refund due to the final court order  
29 or final decision of a board of assessment appeals: *Provided*, That said adjustment shall not be  
30 made or shall only be made proportionately when the Legislature fails to fund, or funds only in  
31 part, the public school basic foundation support plan state share at a level sufficient to cover the  
32 reduction in state share: *Provided, however*, That nothing herein provided shall be construed to  
33 require or mandate any level of funding by the Legislature.

34                   (2) In those instances where the local share as computed under §18-9A-11 of this code is  
35 not reflective of local funds available because the county is collecting tax based upon an assessed  
36 value which is less than that determined by the tax commissioner in the most recent published  
37 survey of property valuations in the state due to an error in the published survey, which error is  
38 certified to by the tax commissioner, the allocated state aid share shall be the county's basic  
39 foundation program, minus the local share as computed under §18-9A-11 of this code, plus the  
40 amount of property tax the county is unable to collect based on differences in the assessed  
41 valuation between those in the most recent published survey of valuation and the corrected  
42 assessed value actually levied upon by the county: *Provided*, That said adjustment shall not be  
43 made or shall only be made proportionately when the Legislature fails to fund or funds only in part  
44 the public school basic foundation support plan state share at a level sufficient to cover the

45 reduction in state share: *Provided, however,* That nothing herein provided shall be construed to  
46 require or mandate any level of funding by the Legislature.

47 (3) In instances where a county is unable to collect property taxes from a taxpayer during  
48 the pendency of any court proceeding, the allocated state aid share shall be the county's basic  
49 foundation program minus the local share as computed under §18-9A-11 of this code, plus the  
50 amount the county is unable to collect as a result of the pending court proceedings as certified by  
51 the tax commissioner: *Provided,* That the county is required to reimburse the amount of allocated  
52 state aid share attributable to the amount of property tax it later receives upon completion of court  
53 proceedings, which shall be paid into the General Revenue Fund of the state: *Provided, however,*  
54 That said adjustment shall not be made or shall only be made proportionately when the  
55 Legislature fails to fund or funds only in part the public school basic foundation support plan state  
56 share at a level sufficient to cover the reduction in state share: *Provided further,* That nothing  
57 herein provided shall be construed to require or mandate any level of funding by the Legislature.

58 (c) The allocated state aid share shall be adjusted in any county receiving payments or  
59 contributions in lieu of property taxes. In instances where a county receives payments or  
60 contributions in lieu of property taxes, the allocated state aid share shall be the county's basic  
61 foundation program minus the local share as computed under §18-9A-11 of this code, plus any  
62 amounts added pursuant to subsection (b) of this section minus the payments or contributions in  
63 lieu of property taxes which are distributed by the sheriff to the county board of education. In  
64 determining the amount of such contribution or payment in lieu of taxes, each county commission  
65 shall provide to the State Tax Commissioner, by January 1 of each year, the total amount of such  
66 payments or contributions paid to the county and the proportion of the total amount that has been  
67 or will be distributed to the county board of education. The State Tax Commissioner then shall  
68 provide the State Board, by January 15 of each year, a certified listing of those counties in which  
69 an adjustment pursuant to this section shall be made, together with the amount of revenue which  
70 will be available to each county board in the ensuing fiscal year as a result of contribution or

71 payment in lieu of taxes.

72 (d) Total basic state aid to the county shall be the computed state share of basic foundation  
73 support. After such computation is completed, the State Board shall immediately certify to each  
74 county board the amount of state aid allocated to the county for that fiscal year, subject to any  
75 qualifying provisions of this article.

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-5. Powers and duties of state superintendent.**

1 (a) The State Superintendent of Schools shall organize, promote, administer, and be  
2 responsible for:

3 (1) Stimulating and assisting county boards of education in establishing, organizing, and  
4 maintaining special schools, classes, regular class programs, home-teaching, and visiting-  
5 teacher services for exceptional children.

6 (2) Cooperating with all other public and private agencies engaged in relieving, caring for,  
7 curing, educating, and rehabilitating exceptional children, and in helping coordinate the services  
8 of such agencies.

9 (3) (A) Preparing the necessary rules, policies, formula and formulas for distribution of  
10 available appropriated funds, reporting forms, and procedures necessary to define minimum  
11 standards in providing suitable facilities for education of exceptional children and ensuring the  
12 employment, certification, and approval of qualified teachers and therapists subject to approval  
13 by the State Board of Education: *Provided*, That no state rule, policy, or standard under this article  
14 or any county board rule, policy, or standard governing special education may exceed the  
15 requirements of federal law or regulation.

16 (B) An A separate appropriation shall be made to the Department of Education to  
17 be distributed disbursed to county boards and public charter schools authorized pursuant to §18-  
18 5G-1 et seq. of this code to support children assist them with serving exceptional  
19 children with high cost/high acuity special needs that exceed the capacity of county to provide

20 with funds available. Each county board and public charter school shall apply to the state  
21 superintendent ~~for receipt of~~ to receive this funding in a manner set forth by the state  
22 superintendent that assesses and takes into account varying acuity levels of the exceptional  
23 students. Any remaining funds at the end of a fiscal year from the appropriation shall be carried  
24 over to the next fiscal year. When possible, federal funds shall be distributed disbursed to county  
25 boards and public charter schools for this purpose before any of the state appropriation  
26 is distributed disbursed. The state board shall promulgate a rule in accordance with the provisions  
27 of §29A-3B-1 *et seq.* of this code that implements the provisions of this subdivision relating to  
28 distributing disbursing the funds to the county boards and public charter schools. The rule at least  
29 shall include a definition for "children with high acuity needs".

30 (4) Receiving from county boards of ~~education and public charter schools~~, their  
31 applications, annual reports, and claims for reimbursement from such moneys as are appropriated  
32 by the Legislature, auditing such claims, and preparing vouchers to reimburse said counties the  
33 amounts reimbursable to them.

34 (5) Assuring that all exceptional children in the state, including children in mental health  
35 facilities, residential institutions, private schools and correctional facilities as provided in §18-2-  
36 13f of this code receive an education in accordance with state and federal laws: *Provided*, That  
37 the state superintendent shall also assure that adults in correctional facilities and regional jails  
38 receive an education to the extent funds are provided therefor.

39 (6) Performing other duties and assuming other responsibilities in connection with this  
40 program as needed.

41 (7) ~~Receive the county plan for integrated classroom submitted by the county boards of~~  
42 ~~education and submit a state plan, approved by the State Board of Education, to the Legislative~~  
43 ~~Oversight Commission on Education Accountability no later than December 1, 1995~~

44 (b) Nothing contained in this section shall be construed to prevent any county board of  
45 education from establishing and maintaining special schools, classes, regular class programs,

46 home-teaching, or visiting-teacher services for exceptional children out of funds available from  
47 local revenue.

## **ARTICLE 31. EDUCATION SAVINGS ACCOUNT PROGRAM.**

### **§18-31-1. Short title.**

1 This article shall be known as the "Education Savings Account Act" or "ESA Act." The  
2 program created by the ESA Act shall be known as the "Education Savings Account Program" or  
3 "ESA Program."

### **§18-31-2. Definitions.**

1 The following words have the meanings ascribed to them unless the context clearly  
2 indicates a different meaning:

3 (1) "Account" or "ESA" means an education savings account, awarded pursuant to this  
4 article, to which funds are allocated by the treasurer to the parent or parents of an ESA student  
5 in order to pay qualifying education expenses to educate the student pursuant to the requirements  
6 and conditions of this article;

7 (2) "Curriculum" means a complete course of study for a particular content area or grade  
8 level, including any supplemental materials required by the curriculum;

9 (3) "Education service provider" means a person or organization that receives payments  
10 from education savings accounts to provide educational goods and services to ESA students;

11 (4) "Eligible student" means a student who has attended a West Virginia public elementary  
12 or secondary school in the prior school year and who:

13 (i) Possesses an Individualized Education Plan (IEP) written in accordance with rules  
14 established by the State Board;

15 (ii) Was determined IDEA eligible by a multidisciplinary evaluation team;

16 (iii) possesses a 504 plan;

17 (iv) Is medically diagnosed by a licensed physician in one of the IDEA disability categories  
18 under 20 USC 1401(3)(A01; or

19                   (v) Was the victim of a prohibited incident of harassment, intimidation or bullying pursuant  
20                   to §18-2C-1, et seq., of this code.

21                   (5) "ESA student" means a student who receives an account pursuant to this article;

22                   (6) "Parent" means a biological parent, legal guardian, custodian, or other person with  
23                   legal authority to act on behalf of an eligible student or ESA student;

24                   (7) "Participating school" means any private school that provides education to elementary  
25                   and/or secondary students and has notified the treasurer of its intention to participate in the  
26                   program and comply with the program's requirements;

27                   (8) "Resident school district" means the county school district in which the student resides;  
28                   and

29                   (9) "Treasurer" means the West Virginia State Treasurer's Office or an organization that  
30                   the Treasurer has contracted with to carry out any or all portions of this article.

### **§18-31-3. Basic elements of the Education Savings Account Program.**

1                   (a) The amount of funds deposited in an account pursuant to this article shall be an amount  
2                   equivalent to 75 percent of the prior year's statewide average net state aid allotted per pupil based  
3                   on net enrollment adjusted for state aid purposes. These funds shall be derived from a line item  
4                   appropriation established for the purposes of this article.

5                   (b) In exchange for the parent's agreement pursuant to §18-31-4(c)(4) of this code, the  
6                   Department of Education shall transfer the amount determined pursuant §18-31-3(a) of this code  
7                   to the treasurer for deposit into a West Virginia ESA.

8                   (c) The State Superintendent of Schools shall, by rule, determine how the fund transfer to  
9                   the treasurer shall be accomplished.

10                   (d) Parents of an ESA student shall agree to use the funds deposited in their student's  
11                   ESA only for the following qualifying expenses to educate the ESA student:

12                   (1) Tuition and/or fees at a private school;

13                   (2) Tuition and/or fees for nonpublic online learning programs;

(3) Tutoring services provided by a tutoring facility or a tutor who is:

(i) A teacher licensed in any state;

(ii) Has taught at an eligible postsecondary institution;

(iii) Is a subject matter expert; or

(iv) Is otherwise approved by the West Virginia Department of Education;

(4) Services contracted for, and provided by, a public district, charter, or magnet school,

including without limitation, individual classes and extracurricular activities and programs;

(5) Textbooks, curriculum, or other instructional materials, including without limitation, any supplemental materials or associated online instruction required by either a curriculum or an education service provider;

(6) Computer hardware or other technological devices that are used solely for a student's  
instructional needs and approved by the Treasurer or licensed physician;

(7) Educational software and applications that are used solely for a student's educational and approved by the Treasurer or licensed physician;

### (8) School uniforms;

(9) Fees for nationally standardized assessments, advanced placement examinations, examinations related to college or university admission, and tuition and/or fees for preparatory schools for the aforementioned exams;

(10) Fees for summer education programs and specialized after-school education programs, but not after-school childcare;

(11) Tuition, fees, instructional materials, and examination fees at a career or technical or education provider:

(12) Educational services and therapies, including, but not limited to, occupational, behavioral, physical, speech-language, and audiology therapies;

(13) Tuition and fees at an institution of higher education;

(14) Fees for transportation paid to a fee-for-service transp

40 to travel to and from an education service provider; or

41 (15) Any other educational expense approved by the treasurer.

42 (e) The funds in an ESA may only be used for educational purposes in accordance with

43 §18-31-3(d) of this code.

44 (f) ESA funds may not be refunded, rebated, or shared with a parent or ESA student in  
45 any manner. Any refund or rebate for goods or services purchased with ESA funds shall be  
46 credited directly to the student's ESA.

47 (g) Parents are allowed to make payments for the costs of educational goods and services  
48 not covered by the funds in their student's ESA. However, personal deposits into an ESA is not  
49 permitted.

50 (h) Funds deposited in an ESA do not constitute taxable income to the parent or the ESA  
51 student.

52 (i) An ESA shall remain in force, and any unused funds shall roll over from quarter-to-  
53 quarter and from year-to-year until the parent withdraws the ESA student from the ESA Program  
54 or until the ESA student graduates from college with a bachelor's degree, unless the ESA is closed  
55 because of a substantial misuse of funds. However, if an ESA student has not enrolled in a  
56 postsecondary institution within four years after graduating from high school, or if an ESA student  
57 turns 24 years of age, whichever occurs first, the ESA shall be closed and any unused funds  
58 revert to the treasurer and be allocated to fund other ESAs.

59 (j) Nothing in this article requires that an ESA student must be enrolled, full or part-time,  
60 in either a private school or nonpublic online school.

#### §18-31-4. Application for an Education Savings Account.

1 (a) A parent may apply to the treasurer to establish an ESA for an eligible student at any  
2 point on or after July 1, 2019. The household income of an eligible student shall be less than  
3 \$150,000 per year to qualify for the education savings account program. For purposes of this  
4 article, the household income shall be the adjusted gross income claimed for federal income tax

5     purposes by the biological parent or parents, legal guardian or guardians, custodian or  
6     custodians, or person or persons with legal authority to act on behalf of an eligible student plus  
7     any income of the eligible student. The treasurer shall develop a process for verifying the income  
8     of any applicant for the education savings account.

9             (b) The treasurer shall accept and approve applications year-round and shall establish  
10     procedures for approving applications in an expeditious manner: *Provided, That the number of*  
11     education savings accounts may not exceed 2,500 total at any one time.

12             (c) The treasurer shall create a standard form that parents can submit to establish their  
13     student's eligibility for the ESA Program and shall ensure that the application is readily available  
14     and may be submitted through various sources, including the Internet.

15             (d) The treasurer shall approve an application for an ESA if:

16                 (1) The parent submits an application for an ESA in accordance with any application  
17     procedures established by the treasurer and the treasurer verifies the enrollment status and  
18     eligibility of the student through the West Virginia Department of Education;

19                 (2) The student on whose behalf the parent is applying is an eligible student;

20                 (3) Funds are available for the ESA; and

21                 (4) The parent signs an agreement with the treasurer, promising:

22                     (A) To provide an education for the eligible student in at least the subjects of reading,  
23     language, mathematics, science, and social studies;

24                     (B) Not to enroll the ESA student, full-time, in a district school, an Innovation in Education  
25     School, or a West Virginia School for the Deaf and Blind;

26                     (C) To use the funds in the ESA only for qualifying expenses to educate the eligible student  
27     as established by the ESA Program; and

28                     (D) To comply with the rules and requirements of the ESA Program and all applicable  
29     federal and state law and regulations..

30                     (E) To afford the ESA student opportunities for educational enrichment such as organized

31     athletics, art, music, or literature.

32         (e) Upon notice to the treasurer, an ESA student may choose to stop receiving ESA  
33         funding and enroll full-time in a public school.

34         (f) Enrolling as a full-time student in a public school shall result in the immediate  
35         suspension of payment of additional funds into the student's ESA; however, the ESA shall remain  
36         open and active for the parent to make qualifying expenditures to educate the student from funds  
37         remaining in the ESA. When or if no funds remain in the student's ESA or the student turns 24,  
38         the treasurer may close the ESA.

39         (g) If an eligible student decides to return to the ESA Program, they must reapply.

40         (h) The treasurer may adopt rules and policies to provide the least disruptive process for  
41         ESA students who desire to stop receiving ESA payments and enroll full-time in a public school.

#### §18-31-5. Responsibilities of the Treasurer.

1         In addition to the treasurer's duties, obligations, and authority stated in other parts of this  
2         article, the treasurer has the following duties, obligations, and authority:

3             (1) The treasurer shall maintain an updated list of participating schools and shall ensure  
4             that the list is publicly available through various sources, including the Internet.

5             (2) The treasurer shall provide parents with a written explanation of the allowable uses of  
6         ESA funds, the responsibilities of parents, the duties of the treasurer and the role of any private  
7         financial management firms or other private organizations that the treasurer may contract with to  
8         administer the ESA Program or any aspect of the ESA Program.

9             (3) The treasurer shall ensure that parents of students with a disability receive notice that  
10         participation in the ESA Program is a parental placement under 20 U.S.C. § 1412 of the  
11         Individuals with Disabilities Education Act (IDEA) along with an explanation of the rights that  
12         parentally placed students possess under (IDEA) and any applicable state laws and regulations.

13             (4) The treasurer shall contract with private organizations to administer the ESA Program.  
14         This includes, but is not limited to, private financial management firms to manage ESAs.

15                   (5) The treasurer may deduct an amount from education savings accounts to cover the  
16 costs of administering the ESA Program, up to a maximum of five percent annually in the first two  
17 years of the ESA Program and up to a maximum of three percent annually thereafter.

18                   (6) The treasurer shall implement or contract with a private organization to implement a  
19 commercially viable, cost effective, and parent-friendly system for payment for services from  
20 ESAs to education service providers by electronic or online funds transfer and by debit card. The  
21 treasurer shall not adopt a system that relies exclusively on requiring parents to be reimbursed  
22 for out-of-pocket expenses, but rather shall provide maximum flexibility to parents by facilitating  
23 direct payments to education service providers as well as requests for preapproval of and  
24 reimbursements for qualifying expenses, including expenses pursuant to §18-31-3(d)(15) of this  
25 code.

26                   (7) The treasurer shall also seek to implement a commercially viable, cost-effective, and  
27 parent-friendly system for publicly rating, reviewing, and sharing information about education  
28 service providers, ideally as part of the same system that facilitates the electronic or online funds  
29 transfers so as to create a one-stop-shop for parents and ESA students.

30                   (8) If an education service provider requires partial payment of tuition or fees prior to the  
31 start of the academic year to reserve space for an ESA student admitted to the education service  
32 provider, such partial payment may be paid by the treasurer prior to the start of the school year in  
33 which the ESA is awarded, and deducted in an equitable manner from subsequent ESA deposits  
34 to ensure adequate funds remain available throughout the school year; but if an ESA student  
35 decides not to use the education service provider, the partial reservation payment must be  
36 returned to the treasurer by such education service provider and credited to the student's ESA.

37                   (9) The treasurer shall continue making deposits into a student's ESA until:

38                   (A) The treasurer determines that the ESA student is no longer an eligible student;

39                   (B) The treasurer determines that there was substantial misuse of the funds in the ESA;

40                   (C) The parent or ESA student withdraws from the ESA Program;

41                   (D) The ESA student enrolls full-time in a public school; or

42                   (E) The ESA student graduates from high school.

43                   (10) The treasurer shall coordinate with the State Auditor to conduct or contract for the  
44                   auditing of individual ESAs, and shall, at a minimum, conduct random audits of ESAs on an annual  
45                   basis.

46                   (11) The treasurer shall have the authority to make any parent or ESA student ineligible  
47                   for the ESA Program in the event of intentional and substantial misuse of ESA funds.

48                   (A) The treasurer shall create procedures to ensure that a fair process exists to determine  
49                   whether an intentional and substantial misuse of ESA funds has occurred.

50                   (B) The treasurer shall have the authority to refer suspected cases of intentional and  
51                   substantial misuse of ESA funds to the Attorney General for investigation if evidence of fraudulent  
52                   use of ESA funds is obtained.

53                   (C) A parent or ESA student may appeal the treasurer's decision to make a parent or ESA  
54                   student ineligible for the ESA Program to the Parent Review Committee pursuant to §18-31-6 of  
55                   this code.

56                   (12) The treasurer may bar an education service provider from accepting payments from  
57                   ESAs if the treasurer determines that the education service provider has:

58                   (A) Intentionally and substantially misrepresented information or failed to refund any  
59                   overpayments in a timely manner; or

60                   (B) Routinely failed to provide students with promised educational goods or services.

61                   (13) The treasurer shall create procedures to ensure that a fair process exists to determine  
62                   whether an education service provider may be barred from receiving payment from ESAs.

63                   (A) If the treasurer bars an education service provider from receiving payments from  
64                   ESAs, it shall notify parents and ESA students of its decision as quickly as possible.

65                   (B) Education service providers may appeal the treasurer's decision to bar them from  
66                   receiving payments from ESAs to the Parent Review Committee pursuant to §18-31-6 of this

67 code.

68 (14) The treasurer may accept gifts and grants from any source to cover administrative  
69 costs, to inform the public about the ESA Program, or to fund additional ESAs.

70 (15) The treasurer shall adopt rules and policies in accordance with §29A-3A-1 *et seq.*  
71 and §29A-3B-1 *et seq.* that are necessary for the administration of this article and to meet the  
72 duties and responsibilities set forth herein.

73 (16) The treasurer may adopt rules and policies in accordance with §29A-3A-1 *et seq.* and  
74 §29A-3B-1 *et seq.* that are not inconsistent with this article and that are necessary for the  
75 administration of this article, including:

76 (A) Establishing or contracting for the establishment of an online anonymous fraud  
77 reporting service;

78 (B) Establishing an anonymous telephone hotline for fraud reporting;

79 (C) Policies that require a surety bond for education service providers receiving more than  
80 \$100,000 in ESA funds;

81 (D) Procedures for refunding payments from education service providers back to ESAs;  
82 and

83 (E) Procedures for entering into reciprocal agreements with other state ESA agencies or  
84 entities, whether public or private, to recognize and allow education service providers approved  
85 in other states to receive payments from ESAs under this article.

86 (17) The treasurer shall create procedures for verifying the eligibility and enrollment status  
87 of students through the West Virginia Department of Education.

88 (18) Any rules or policies adopted by the treasurer should avoid excessive bureaucracy  
89 and overly prescriptive mandates and instead focus on easing parental involvement and  
90 encouraging education service providers to provide parents and ESA students with a broad array  
91 of educational options.

#### **§18-31-6. Parent Review Committee.**

1           (a) There is created the Parent Review Committee to assist the treasurer in determining  
2        whether questionable expenditures meet the requirements to be considered qualifying expenses  
3        to educate the ESA student pursuant to §18-31-3(d) of this code, and to provide recommendations  
4        to the treasurer about how to implement, administer, and improve the ESA Program.

5           (b) (1) The Parent Review Committee:

6           (A) Consists of seven members who are parents of ESA students and represent no fewer  
7        than four counties in the state; and

8           (B) Shall be appointed by the State Treasurer and serve at the State Treasurer's pleasure  
9        for one calendar year and may be reappointed; and

10           (2) The State Treasurer, or the treasurer's designee, serves as the nonvoting chair of the  
11        committee.

12           (c) The treasurer may request the committee to meet, in person or virtually, to determine  
13        whether an expenditure of ESA funds is or was a qualifying expense to educate an ESA student  
14        pursuant to §18-31-3(d) of this code. The committee may deny or approve questionable  
15        expenditures by a majority vote.

16           (d) The treasurer may also request the committee to meet, in person or virtually, to review  
17        appeals of:

18           (1) Parents or ESA students who have been found ineligible due to intentional and  
19        substantial misuse of ESA funds; and

20           (2) Education service provider denials pursuant to §18-31-7 of this code, and to provide a  
21        recommendation to the treasurer as to whether an education service provider should be allowed  
22        to receive, or continue receiving, payments from ESAs.

#### **§18-31-7. Requirements for and rights of education service providers.**

1           (a) To be eligible to accept payments from an ESA, an education service provider shall:

2           (1) Submit notice to the treasurer that they wish to participate in the ESA Program;

3           (2) Provide parents with a receipt for all qualifying educational expenses;

4                   (3) Agree not to refund, rebate, or share ESA funds with parents or ESA students in any  
5                   manner, except that funds may be remitted or refunded to an ESA in accordance with procedures  
6                   established by the treasurer;

7                   (4) Certify that it will not discriminate on any basis prohibited by 42 U.S.C. §1981; and

8                   (5) Agree to submit any employee who will have contact with ESA students to a criminal  
9                   background check.

10                  (b) This article does not limit the independence or autonomy of an education service  
11                  provider or makes the actions of an education service provider the actions of the state  
12                  government.

13                  (c) Education service providers shall be given maximum freedom to provide for the  
14                  educational needs of ESA students without governmental control.

15                  (d) This article does not expand the regulatory authority of the state, its officers, or any  
16                  school district to impose any additional regulation of education service providers beyond those  
17                  necessary to enforce the requirements of the program.

#### **§18-31-8. Responsibilities of resident school districts.**

1                  The resident school district shall provide an education service provider that has enrolled  
2                  an ESA student with a complete copy of the student's school records, while complying with the  
3                  Family Educational Rights and Privacy Act of 1974 (20 USC Section 1232 g).

#### **§18-31-9. Legal proceedings.**

1                  (a) In any legal proceeding challenging the application of this article to a participating  
2                  entity, the state bears the burden of establishing that the challenged action, rule, or requirement  
3                  is necessary and does not impose any undue burden on education service providers.

4                  (b) No liability arises on the part of the treasurer or the state or of any county school district  
5                  based on the award or use of an ESA awarded pursuant to this article.

6                  (c) If any part of this article is challenged in a state court as violating either the state or  
7                  federal constitutions, parents of eligible and/or ESA students are permitted to intervene in the

8       lawsuit for the purposes of defending the article's constitutionality. However, for the purposes of  
9       judicial administration, a court may limit the number of parents permitted to intervene or require  
10      that all parents file a joint brief, so long as they are not required to join any brief filed on behalf of  
11      any named state defendant.

## CHAPTER 18A. SCHOOL PERSONNEL.

### §18A-2-8. Suspension and dismissal of school personnel by board; appeal.

12       (a) Notwithstanding any other provisions of law, a board may suspend or dismiss any  
13      person in its employment at any time for: Immorality, incompetency, cruelty, insubordination,  
14      intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the  
15      Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code, a  
16      misdemeanor with a rational nexus between the conduct and performance of the employee's job,  
17      the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

18       (b) A charge of unsatisfactory performance shall not be made except as the result of an  
19      employee performance evaluation pursuant to section twelve of this article. The charges shall be  
20      stated in writing served upon the employee within two days of presentation of the charges to the  
21      board.

22       (c) The affected employee shall be given an opportunity, within five days of receiving the  
23      written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions  
24      of §6C-2-1 et seq. of this code, except that dismissal for a finding of abuse or the conviction of a  
25      felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a  
26      grievance proceeding. An employee charged with the commission of a felony, a misdemeanor  
27      with a rational nexus between the conduct and performance of the employee's job, or child abuse  
28      may be reassigned to duties which do not involve direct interaction with pupils pending final  
29      disposition of the charges.

30       (d) A county board of education has the duty and authority to provide a safe and secure  
31      environment in which students may learn and prosper; therefore, it may take necessary steps to

32     suspend or dismiss any person in its employment at any time should the health, safety, and  
33     welfare of students be jeopardized or the learning environment of other students has been  
34     impacted.

**§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.**

1             (a) The state superintendent may, after ten days' notice and upon proper evidence,  
2     revoke the certificates of any teacher for any of the following causes: Intemperance;  
3     untruthfulness; cruelty; immorality; a finding of abuse by the Department of Health and Human  
4     Resources in accordance with §49-1-1 et seq of this code; the conviction of a felony or a guilty  
5     plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to  
6     any charge involving sexual misconduct with a minor or a student; or for using fraudulent,  
7     unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a  
8     teacher may not be revoked for any matter for which the teacher was disciplined, less than  
9     dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or  
10    has met an improvement plan determined by the county board, unless it can be proven by clear  
11    and convincing evidence that the teacher has committed one of the offenses listed in this  
12    subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in  
13    order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent,  
14    unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation  
15    of the certificates of the teacher, there must be a rational nexus between the conduct of the  
16    teacher and the performance of his or her job. The state superintendent may designate the West  
17    Virginia commission for professional teaching standards or members thereof to conduct hearings  
18    on revocations or certificate denials and make recommendations for action by the state  
19    superintendent: *Provided further*, That a teacher convicted under §61-8D-5 or a finding of abuse  
20    under §49-1-1 et seq. of this code shall have his or her certificate or license automatically revoked.

21             (b) It shall be the duty of any county superintendent who knows of any acts on the part of  
22    any teacher for which a certificate may be revoked in accordance with this section to report the

23 same, together with all the facts and evidence, to the state superintendent for such action as in  
24 the state superintendent's judgment may be proper.

25 (c) If a certificate has been granted through an error, oversight, or misinformation, the  
26 state superintendent has authority to recall the certificate and make such corrections as will  
27 conform to the requirements of law and the state board.

## **ARTICLE 4. SALARIES, WAGES, AND OTHER BENEFITS.**

### **§18A-4-2. State minimum salaries for teachers.**

1 (a) It is the goal of the Legislature to increase the state minimum salary for teachers with  
2 zero years of experience and an A. B. degree, including the equity supplement, to at least \$43,000  
3 by fiscal year 2019.

4 (b) For school year 2018–2019, ~~and continuing thereafter~~, each teacher shall receive the  
5 amount prescribed in the State Minimum Salary Schedule I as set forth in this section; specific  
6 additional amounts prescribed in this section or article; and any county supplement in effect in a  
7 county pursuant to §18A-4-5a of this code during the contract year: Provided, That for the school  
8 year 2019-2020, and continuing thereafter, each teacher shall receive the amount prescribed in  
9 the State Minimum Salary Schedule II as set forth in this section; specific additional amounts  
10 prescribed in this section or article; and any county supplement in effect in a county pursuant to  
11 §18A-4-5a of this code during the contract year.

#### **STATE MINIMUM SALARY SCHEDULE I**

Years Exp	4 <sup>th</sup> Class	3 <sup>rd</sup> Class	2 <sup>nd</sup> Class	A.B. + 15	A.B. + 15	M.A. + 15	M.A. + 30	M.A. + 45	M.A. + 45	Doc- torate
0	29,937	30,626	30,892	32,335	33,096	34,863	35,624	36,385	37,146	38,181
1	30,265	30,954	31,220	32,853	33,614	35,382	36,143	36,903	37,664	38,699
2	30,594	31,282	31,548	33,372	34,133	35,900	36,661	37,422	38,183	39,218
3	30,922	31,610	31,876	33,891	34,651	36,419	37,180	37,940	38,701	39,736

4	31,494	32,182	32,448	34,653	35,414	37,182	37,943	38,703	39,464	40,499		
5	31,822	32,510	32,776	35,172	35,933	37,700	38,461	39,222	39,983	41,018		
6	32,150	32,838	33,104	35,690	36,451	38,219	38,980	39,740	40,501	41,536		
7	32,478	33,167	33,432	36,209	36,970	38,737	39,498	40,259	41,020	42,055		
8	32,806	33,495	33,761	36,727	37,488	39,256	40,017	40,777	41,538	42,573		
9	33,134	33,823	34,089	37,246	38,007	39,774	40,535	41,296	42,057	43,092		
10	33,463	34,151	34,417	37,766	38,526	40,294	41,055	41,816	42,576	43,611		
11	33,791	34,479	34,745	38,284	39,045	40,813	41,573	42,334	43,095	44,130		
12	34,119	34,807	35,073	38,803	39,563	41,331	42,092	42,853	43,613	44,648		
13	34,447	35,135	35,401	39,321	40,082	41,850	42,610	43,371	44,132	45,167		
14	34,775	35,463	35,729	39,840	40,600	42,368	43,129	43,890	44,650	45,685		
15	35,103	35,791	36,057	40,358	41,119	42,887	43,647	44,408	45,169	46,204		
16	35,431	36,119	36,385	40,877	41,637	43,405	44,166	44,927	45,687	46,722		
17	35,759	36,448	36,713	41,395	42,156	43,924	44,685	45,445	46,206	47,241		
18	36,087	36,776	37,042	41,914	42,675	44,442	45,203	45,964	46,725	47,760		
19	36,415	37,104	37,370	42,432	43,193	44,961	45,722	46,482	47,243	48,278		
20	36,743	37,432	37,698	42,951	43,712	45,479	46,240	47,001	47,762	48,797		
21	37,072	37,760	38,026	43,469	44,230	45,998	46,759	47,519	48,280	49,315		
22	37,400	38,088	38,354	43,988	44,749	46,516	47,277	48,038	48,799	49,834		
23	37,728	38,416	38,682	44,507	45,267	47,035	47,796	48,556	49,317	50,352		
24	38,056	38,744	39,010	45,025	45,786	47,554	48,314	49,075	49,836	50,871		
25	38,384	39,072	39,338	45,544	46,304	48,072	48,833	49,594	50,354	51,389		
26	38,712	39,400	39,666	46,062	46,823	48,591	49,351	50,112	50,873	51,908		
27	39,040	39,728	39,994	46,581	47,341	49,109	49,870	50,631	51,391	52,426		
28	39,368	40,057	40,322	47,099	47,860	49,628	50,388	51,149	51,910	52,945		
29	39,696	40,385	40,651	47,618	48,378	50,146	50,907	51,668	52,428	53,463		
30	40,024	40,713	40,979	48,136	48,897	50,665	51,425	52,186	52,947	53,982		
31	40,353	41,041	41,307	48,655	49,416	51,183	51,944	52,705	53,465	54,500		
32	40,681	41,369	41,635	49,173	49,934	51,702	52,463	53,223	53,984	55,019		
33	41,009	41,697	41,963	49,692	50,453	52,220	52,981	53,742	54,503	55,538		
34	41,337	42,025	42,291	50,210	50,971	52,739	53,500	54,260	55,021	56,056		

35 41,665 42,353 42,619 50,729 51,490 53,257 54,018 54,779 55,540 56,575

12

13

STATE MINIMUM SALARY SCHEDULE II

Years <u>Exp.</u>	4 <sup>th</sup> <u>Class</u>	3 <sup>rd</sup> <u>Class</u>	2 <sup>nd</sup> <u>Class</u>	A.B. <u></u>	A.B. <u>+15</u>	M.A. <u></u>	M.A. <u>+15</u>	M.A. <u>+30</u>	M.A. <u>+45</u>	Doc- torate
0	<u>32,057</u>	<u>32,746</u>	<u>33,012</u>	<u>34,455</u>	<u>35,216</u>	<u>36,983</u>	<u>37,744</u>	<u>38,505</u>	<u>39,266</u>	<u>40,301</u>
1	<u>32,385</u>	<u>33,074</u>	<u>33,340</u>	<u>34,973</u>	<u>35,734</u>	<u>37,502</u>	<u>38,263</u>	<u>39,023</u>	<u>39,784</u>	<u>40,819</u>
2	<u>32,714</u>	<u>33,402</u>	<u>33,668</u>	<u>35,492</u>	<u>36,253</u>	<u>38,020</u>	<u>38,781</u>	<u>39,542</u>	<u>40,303</u>	<u>41,338</u>
3	<u>33,042</u>	<u>33,730</u>	<u>33,996</u>	<u>36,011</u>	<u>36,771</u>	<u>38,539</u>	<u>39,300</u>	<u>40,060</u>	<u>40,821</u>	<u>41,856</u>
4	<u>33,614</u>	<u>34,302</u>	<u>34,568</u>	<u>36,773</u>	<u>37,534</u>	<u>39,302</u>	<u>40,063</u>	<u>40,823</u>	<u>41,584</u>	<u>42,619</u>
5	<u>33,942</u>	<u>34,630</u>	<u>34,896</u>	<u>37,292</u>	<u>38,053</u>	<u>39,820</u>	<u>40,581</u>	<u>41,342</u>	<u>42,103</u>	<u>43,138</u>
6	<u>34,270</u>	<u>34,958</u>	<u>35,224</u>	<u>37,810</u>	<u>38,571</u>	<u>40,339</u>	<u>41,100</u>	<u>41,860</u>	<u>42,621</u>	<u>43,656</u>
7	<u>34,598</u>	<u>35,287</u>	<u>35,552</u>	<u>38,329</u>	<u>39,090</u>	<u>40,857</u>	<u>41,618</u>	<u>42,379</u>	<u>43,140</u>	<u>44,175</u>
8	<u>34,926</u>	<u>35,615</u>	<u>35,881</u>	<u>38,847</u>	<u>39,608</u>	<u>41,376</u>	<u>42,137</u>	<u>42,897</u>	<u>43,658</u>	<u>44,693</u>
9	<u>35,254</u>	<u>35,943</u>	<u>36,209</u>	<u>39,366</u>	<u>40,127</u>	<u>41,894</u>	<u>42,655</u>	<u>43,416</u>	<u>44,177</u>	<u>45,212</u>
10	<u>35,583</u>	<u>36,271</u>	<u>36,537</u>	<u>39,886</u>	<u>40,646</u>	<u>42,414</u>	<u>43,175</u>	<u>43,936</u>	<u>44,696</u>	<u>45,731</u>
11	<u>35,911</u>	<u>36,599</u>	<u>36,865</u>	<u>40,404</u>	<u>41,165</u>	<u>42,933</u>	<u>43,693</u>	<u>44,454</u>	<u>45,215</u>	<u>46,250</u>
12	<u>36,239</u>	<u>36,927</u>	<u>37,193</u>	<u>40,923</u>	<u>41,683</u>	<u>43,451</u>	<u>44,212</u>	<u>44,973</u>	<u>45,733</u>	<u>46,768</u>
13	<u>36,567</u>	<u>37,255</u>	<u>37,521</u>	<u>41,441</u>	<u>42,202</u>	<u>43,970</u>	<u>44,730</u>	<u>45,491</u>	<u>46,252</u>	<u>47,287</u>
14	<u>36,895</u>	<u>37,583</u>	<u>37,849</u>	<u>41,960</u>	<u>42,720</u>	<u>44,488</u>	<u>45,249</u>	<u>46,010</u>	<u>46,770</u>	<u>47,805</u>
15	<u>37,223</u>	<u>37,911</u>	<u>38,177</u>	<u>42,478</u>	<u>43,239</u>	<u>45,007</u>	<u>45,767</u>	<u>46,528</u>	<u>47,289</u>	<u>48,324</u>
16	<u>37,551</u>	<u>38,239</u>	<u>38,505</u>	<u>42,997</u>	<u>43,757</u>	<u>45,525</u>	<u>46,286</u>	<u>47,047</u>	<u>47,807</u>	<u>48,842</u>
17	<u>37,879</u>	<u>38,568</u>	<u>38,833</u>	<u>43,515</u>	<u>44,276</u>	<u>46,044</u>	<u>46,805</u>	<u>47,565</u>	<u>48,326</u>	<u>49,361</u>
18	<u>38,207</u>	<u>38,896</u>	<u>39,162</u>	<u>44,034</u>	<u>44,795</u>	<u>46,562</u>	<u>47,323</u>	<u>48,084</u>	<u>48,845</u>	<u>49,880</u>
19	<u>38,535</u>	<u>39,224</u>	<u>39,490</u>	<u>44,552</u>	<u>45,313</u>	<u>47,081</u>	<u>47,842</u>	<u>48,602</u>	<u>49,363</u>	<u>50,398</u>
20	<u>38,863</u>	<u>39,552</u>	<u>39,818</u>	<u>45,071</u>	<u>45,832</u>	<u>47,599</u>	<u>48,360</u>	<u>49,121</u>	<u>49,882</u>	<u>50,917</u>
21	<u>39,192</u>	<u>39,880</u>	<u>40,146</u>	<u>45,589</u>	<u>46,350</u>	<u>48,118</u>	<u>48,879</u>	<u>49,639</u>	<u>50,400</u>	<u>51,435</u>
22	<u>39,520</u>	<u>40,208</u>	<u>40,474</u>	<u>46,108</u>	<u>46,869</u>	<u>48,636</u>	<u>49,397</u>	<u>50,158</u>	<u>50,919</u>	<u>51,954</u>
23	<u>39,848</u>	<u>40,536</u>	<u>40,802</u>	<u>46,627</u>	<u>47,387</u>	<u>49,155</u>	<u>49,916</u>	<u>50,676</u>	<u>51,437</u>	<u>52,472</u>
24	<u>40,176</u>	<u>40,864</u>	<u>41,130</u>	<u>47,145</u>	<u>47,906</u>	<u>49,674</u>	<u>50,434</u>	<u>51,195</u>	<u>51,956</u>	<u>52,991</u>
25	<u>40,504</u>	<u>41,192</u>	<u>41,458</u>	<u>47,664</u>	<u>48,424</u>	<u>50,192</u>	<u>50,953</u>	<u>51,714</u>	<u>52,474</u>	<u>53,509</u>
26	<u>40,832</u>	<u>41,520</u>	<u>41,786</u>	<u>48,182</u>	<u>48,943</u>	<u>50,711</u>	<u>51,471</u>	<u>52,232</u>	<u>52,993</u>	<u>54,028</u>
27	<u>41,160</u>	<u>41,848</u>	<u>42,114</u>	<u>48,701</u>	<u>49,461</u>	<u>51,229</u>	<u>51,990</u>	<u>52,751</u>	<u>53,511</u>	<u>54,546</u>
28	<u>41,488</u>	<u>42,177</u>	<u>42,442</u>	<u>49,219</u>	<u>49,980</u>	<u>51,748</u>	<u>52,508</u>	<u>53,269</u>	<u>54,030</u>	<u>55,065</u>

<u>29</u>	<u>41,816</u>	<u>42,505</u>	<u>42,771</u>	<u>49,738</u>	<u>50,498</u>	<u>52,266</u>	<u>53,027</u>	<u>53,788</u>	<u>54,548</u>	<u>55,583</u>
<u>30</u>	<u>42,144</u>	<u>42,833</u>	<u>43,099</u>	<u>50,256</u>	<u>51,017</u>	<u>52,785</u>	<u>53,545</u>	<u>54,306</u>	<u>55,067</u>	<u>56,102</u>
<u>31</u>	<u>42,473</u>	<u>43,161</u>	<u>43,427</u>	<u>50,775</u>	<u>51,536</u>	<u>53,303</u>	<u>54,064</u>	<u>54,825</u>	<u>55,585</u>	<u>56,620</u>
<u>32</u>	<u>42,801</u>	<u>43,489</u>	<u>43,755</u>	<u>51,293</u>	<u>52,054</u>	<u>53,822</u>	<u>54,583</u>	<u>55,343</u>	<u>56,104</u>	<u>57,139</u>
<u>33</u>	<u>43,129</u>	<u>43,817</u>	<u>44,083</u>	<u>51,812</u>	<u>52,573</u>	<u>54,340</u>	<u>55,101</u>	<u>55,862</u>	<u>56,623</u>	<u>57,658</u>
<u>34</u>	<u>43,457</u>	<u>44,145</u>	<u>44,411</u>	<u>52,330</u>	<u>53,091</u>	<u>54,859</u>	<u>55,620</u>	<u>56,380</u>	<u>57,141</u>	<u>58,176</u>
<u>35</u>	<u>43,785</u>	<u>44,473</u>	<u>44,739</u>	<u>52,849</u>	<u>53,610</u>	<u>55,377</u>	<u>56,138</u>	<u>56,899</u>	<u>57,660</u>	<u>58,695</u>

14

15 (c) Six hundred dollars shall be paid annually to each classroom teacher who has at least  
16 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed  
17 in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments;  
18 and (iii) shall be considered a part of the state minimum salaries for teachers.

19 (d) Effective July 1, 2020, each classroom teacher providing math instruction in the  
20 teacher's certified area of study for at least 60 percent of the time the teacher is providing  
21 instruction to students shall be considered to have three additional years of experience only for  
22 the purposes of the salary schedule set forth in §18A-4-2(b) of this code.

23 (d) (e) To meet the objective of salary equity among the counties as set forth in §18A-4-5  
24 of this code, In accordance with §18A-4-5 of this code, each teacher shall be paid an equity the  
25 supplement amount as applicable for his or her classification of certification or classification of  
26 training and years of experience as follows, subject to the provisions of that section:

27 (1) For "4th Class" at zero years of experience, \$1,781. An additional \$38 shall be paid for  
28 each year of experience up to and including 35 years of experience;

29 (2) For "3rd Class" at zero years of experience, \$1,796. An additional \$67 shall be paid for  
30 each year of experience up to and including 35 years of experience;

31 (3) For "2nd Class" at zero years of experience, \$1,877. An additional \$69 shall be paid  
32 for each year of experience up to and including 35 years of experience;

33 (4) For "A. B." at zero years of experience, \$2,360. An additional \$69 shall be paid for  
34 each year of experience up to and including 35 years of experience;

35 (5) For "A. B. + 15" at zero years of experience, \$2,452. An additional \$69 shall be paid  
36 for each year of experience up to and including 35 years of experience;

37 (6) For "M. A." at zero years of experience, \$2,644. An additional \$69 shall be paid for  
38 each year of experience up to and including 35 years of experience;

39 (7) For "M. A. + 15" at zero years of experience, \$2,740. An additional \$69 shall be paid  
40 for each year of experience up to and including 35 years of experience;

41 (8) For "M. A. + 30" at zero years of experience, \$2,836. An additional \$69 shall be paid  
42 for each year of experience up to and including 35 years of experience;

43 (9) For "M. A. + 45" at zero years of experience, \$2,836. An additional \$69 shall be paid  
44 for each year of experience up to and including 35 years of experience; and

45 (10) For "Doctorate" at zero years of experience, \$2,927. An additional \$69 shall be paid  
46 for each year of experience up to and including 35 years of experience.

47 These payments: (i) Shall be in addition to any amounts prescribed in the applicable State  
48 Minimum Salary Schedule, any specific additional amounts prescribed in this section and article  
49 and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be  
50 paid in equal monthly installments; and (iii) shall be considered a part of the state minimum  
51 salaries for teachers.

#### **§18A-4-2d. Mathematics teacher incentive.**

1        (a) The Legislature recognizes that receiving quality math instruction is vital to a student's  
2        post-secondary success and that that there is a shortage of certified math teachers to provide  
3        such instruction.

4                   (b) To ensure that students are receiving the appropriate level of math instruction that will  
5 enable post-secondary success, the Department of Education shall develop or approve  
6 specialized mathematics courses and make the courses available to classroom teachers.

7                   (c) Effective July 1, 2019, a classroom teacher who completes a specialized mathematics  
8 course established or approved pursuant to this section by May 1 of the fiscal year shall receive

9     a one-time payment of \$2,000 from the Mathematics Incentive Program line item established for  
10    the Department of Education for this purpose, subject to appropriation by the Legislature. If the  
11    appropriations to the Department of Education for this purpose are insufficient to compensate all  
12    applicable teachers, the Department of Education shall request a supplemental appropriation in  
13    an amount sufficient to compensate all such teachers. Additionally, if funds are still insufficient to  
14    compensate all applicable teachers, each applicable teacher shall receive their proportionate  
15    share of the funding available for the year. This one-time payment may not be counted as part of  
16    the teacher's average final salary for the purpose of calculating retirement and no retirement  
17    contribution will be withheld from the payment.

18        (d) A classroom teacher who completes the mathematics enrichment course established  
19    or approved by the Department of Education after May 1 of the fiscal year shall receive the one-  
20    time payment described in subsection (a) of this section during the subsequent fiscal year, subject  
21    to appropriation by the Legislature.

22        (e) The one-time payment provided for in this section may only be paid to a classroom  
23    teacher providing math instruction in the teacher's certified area of study for at least 60 percent  
24    of the time the teacher is providing instruction to students.

#### **§18A-4-5. Salary equity among the counties; state salary supplement.**

1        (a) For the purposes of this section, salary equity among the counties means that the  
2    salary potential of school employees employed by the various districts throughout the state does  
3    not differ by greater than ten percent between those offering the highest salaries and those  
4    offering the lowest salaries. In the case of professional educators, the difference shall be  
5    calculated using the average of the professional educator salary schedules, degree classifications  
6    B.A. through doctorate and the years of experience provided in the most recent state minimum  
7    salary schedule for teachers, in effect in the ten counties offering the highest salary schedules  
8    compared to the lowest salary schedule in effect among the fifty five counties. In the case of  
9    school service personnel, the difference shall be calculated utilizing the average of the school

10 service personnel salary schedules, pay grades A through H and the years of experience provided  
11 in the most recent state minimum pay scale pay grade for service personnel, in effect in the ten  
12 counties offering the highest salary schedules compared to the lowest salary schedule in effect  
13 among the fifty five counties.

14 (a) The Legislature recognizes its constitutional responsibility to provide for a thorough  
15 and efficient system of education. To carry out this responsibility the Legislature enacted, and  
16 continues to update, as necessary, the public school support program as set forth in §18-9A-1, et  
17 seq. The public school support program is a non-discriminatory funding mechanism for financing  
18 the educational system in this state as it takes into account each county's specific characteristics,  
19 and ensures that all counties are provided equitable funding.

20 (b) The Legislature further finds that the purpose of the public school support program is  
21 not to deter counties from growing economically or from using county resources in a manner that  
22 best meets their specific educational needs and the desires of their citizens. To that end, counties  
23 must have the discretion and flexibility to use local county funds, not otherwise factored into the  
24 public school support program, to provide the best education possible to their students, including,  
25 but not limited to, providing salary supplements to teachers.

26 (b) (c) To meet the objective of salary equity among the counties, as defined in subsection  
27 (a) of this section, on and after July 1, 1984, subject Subject to available state appropriations and  
28 the conditions set forth herein, each teacher and school service personnel shall receive an equity  
29 supplement amount as specified in sections two and eight-a, respectively, of this article in addition  
30 to the amount from the State Minimum Salary Schedules provided in those sections. State funds  
31 for this purpose shall be paid within the West Virginia public school support plan in accordance  
32 with §18-9A-1 et seq. of this code. The amount allocated for this supplement shall be apportioned  
33 between teachers and school service personnel in direct proportion to that amount necessary to  
34 support the professional salaries and service personnel salaries statewide under §18-9A-4, §18-  
35 9A-5, and §18-9A-8 of this code.

36 (c) State funds for this purpose shall be paid within the West Virginia public school support  
37 plan in accordance with article nine-a, chapter eighteen of this code. The amount allocated for  
38 salary equity shall be apportioned between teachers and school service personnel in direct  
39 proportion to that amount necessary to support the professional salaries and service personnel  
40 salaries statewide under sections four, five and eight, article nine-a, chapter eighteen of this code.  
41 In the event the Department of Education determines that the objective of salary equity among  
42 the counties has not been met, it shall include in its budget request for the public school support  
43 plan for the next school year a request for funding sufficient to meet the objective of salary equity  
44 through an across the board increase in the equity supplement amount of the affected class of  
45 employees.

46 (d) Pursuant to this section, each teacher and service person shall receive from state  
47 funds the equity supplement amount indicated in subsection (e), section two and subsection (f),  
48 section eight a of this article §18A-4-2 and §18A-4-8a of this code, as applicable, reduced by any  
49 amount provided by the county as a salary supplement for teachers and school service personnel  
50 on January 1, 1984.

### **§18A-4-5a. County salary supplements for teachers**

1       (a) County boards of education in fixing the salaries of teachers shall use at least the state  
2 minimum salaries established under the provisions of this article. The board may establish salary  
3 schedules which shall be in excess of the state minimums fixed by this article, such county  
4 schedules to be uniform ~~throughout the county~~ as to the classification of training, experience,  
5 responsibility and other requirements subject to the following:

6           (1) Counties may fix higher salaries for teachers placed in special instructional  
7 assignments, for those assigned to or employed for duties other than regular instructional duties,  
8 and for teachers of one-teacher schools; ~~and they~~

9           (2) Counties may provide additional compensation for any teacher assigned duties in  
10 addition to the teacher's regular instructional duties wherein such noninstructional duties are not  
11 a part of the scheduled hours of the regular school day; Uniformity also shall apply to such  
12 additional salary increments or compensation for all persons performing like assignments and  
13 duties within the county: Provided, That

14           (3) Counties may provide additional compensation for teachers who are assigned and fully  
15 certified to teach in a subject area in which the county board finds it has a critical need and  
16 shortage of fully certified teachers;

17           (4) Counties may provide additional compensation or other financial assistance to  
18 teachers who teach in schools that are in remote geographical locations or have experienced high  
19 rates of turnover in experienced teachers; and

20           (5) Counties may provide additional compensation to teachers who, in addition to regularly  
21 assigned teaching duties, are assigned as a master teacher, mentor, academic coach, or other  
22 title whose duties include providing strong school-based support and supervision to assist  
23 licensure candidates in a clinical internship, beginning teachers, and other teachers at the school  
24 to improve their professional practice as set forth in the county's comprehensive system of support  
25 for teacher and leader induction and professional growth provided for in section §18A-3C-3 of this  
26 code.

27           (b) In establishing such local salary schedules authorized in subsection (a) of this section,  
28 no county shall a county may not reduce local funds allocated for salaries in effect on January 1,  
29 1990, and used in supplementing the state minimum salaries as provided for in this article, unless  
30 forced to do so by defeat of a special levy, or a loss in assessed values or events over which it  
31 has no control and for which the county board has received approval from the state board prior to

32 making such reduction.

33 (c) Counties may provide, in a uniform manner, benefits for teachers which require an  
34 appropriation from local funds including, but not limited to, dental, optical, health and income  
35 protection insurance, vacation time and retirement plans excluding the state Teachers Retirement  
36 System. Nothing herein shall prohibit the maintenance nor result in the reduction of any benefits  
37 in effect on January 1, 1984, by any county board of education.

**§18A-4-7a. Employment, promotion, and transfer of professional personnel; Seniority  
qualifications.**

1 (a) A county board of education shall make decisions affecting the filling of vacancies in  
2 professional positions of employment on the basis of the applicant with the highest qualifications:  
3 *Provided*, That the county superintendent shall be hired under separate criteria pursuant to §18-  
4 4-2 of this code.

5 (b) In judging qualifications for the filling of vacancies of professional positions of  
6 employment, consideration shall be given to each of the following:

7 (1) Appropriate certification, licensure, or both;

8 (2) Amount of experience relevant to the position or, in the case of a classroom teaching  
9 position, the amount of teaching experience in the required certification area;

10 (3) The amount of course work, degree level, or both in the relevant field and degree level  
11 generally;

12 (4) Academic achievement;

13 (5) In the case of a principal or classroom teaching position, certification by the National  
14 Board for Professional Teaching Standards;

15 (6) Specialized training relevant to performing the duties of the job;

16 (7) Past performance evaluations conducted pursuant to §18A-2-12 and §18A-3C-2 of this  
17 code or, in the case of a classroom teacher, past evaluations of the applicant's performance in  
18 the teaching profession;

(8) Seniority;

(9) Other measures or indicators upon which the relative qualifications of the applicant

21 may fairly be judged;

(10) In the case of a classroom teaching position, the recommendation of the principal of

23 the school at which the applicant will be performing a majority of his or her duties; and

(11) In the case of a classroom teaching position, the recommendation, if any, resulting

25 from the process established pursuant to the provisions of §18-5A-5 of this code by the faculty  
26 senate of the school at which the employee will be performing a majority of his or her duties.

(c) When filling of a vacancy pursuant to this section, a county board is entitled to

28 determine the appropriate weight to apply to each of the criterion when assessing an applicant's  
29 qualifications: *Provided*. That if one or more permanently employed instructional personnel apply

30 for a classroom teaching position and meet the standards set forth in the job posting, each  
31 criterion under subsection (b) of this section shall be given equal weight except that the criterion

32 in subdivisions (10) and (11) of said subsection shall each be double weighted.  
33 (d) For a classroom teaching position, if the principal and faculty senate recommend the

applicant pursuant to subdivisions (10) and (11) subsection (b) of this section, and the

35 superintendent concurs with those recommendations, then the other provisions of subsections  
36 (b) and (c) of this section do not apply and the county board shall appoint that applicant

37 notwithstanding any other provision of this code to the contrary.

11. The meaning of SCCA 3B-1, et seq., article three, b, chapter twenty-nine, a of this

40 code to implement and interpret the provisions of this section. The rule may provide for a  
41 procedure to be followed by the authority in making recommendations pursuant to this section.

42 to be compensated at the appropriate daily rate during periods of participation beyond his or her

45 subdivisions (10) and (11), subsection (b) of this section shall be based on a determination as to  
46 which applicant is the most highly qualified for the position: *Provided*, That nothing in this  
47 subsection may require principals or faculty senates to assign any amount of weight to any factor  
48 in making a recommendation.

49 (g) With the exception of guidance counselors, the seniority of classroom teachers, as  
50 defined in section one, article one of this chapter, shall be determined on the basis of the length  
51 of time the employee has been employed as a regular full-time certified and/or licensed  
52 professional educator by the county board of education and shall be granted in all areas that the  
53 employee is certified, licensed or both.

54 (h) Upon completion of 133 days of employment in any one school year, substitute  
55 teachers, except retired teachers and other retired professional educators employed as  
56 substitutes, shall accrue seniority exclusively for the purpose of applying for employment as a  
57 permanent, full-time professional employee. One hundred thirty-three days or more of said  
58 employment shall be prorated and shall vest as a fraction of the school year worked by the  
59 permanent, full-time teacher.

60 (i) Guidance counselors and all other professional employees, as defined in section one,  
61 article one of this chapter, except classroom teachers, shall gain seniority in their nonteaching  
62 area of professional employment on the basis of the length of time the employee has been  
63 employed by the county board of education in that area: *Provided*, That if an employee is certified  
64 as a classroom teacher, the employee accrues classroom teaching seniority for the time that  
65 employee is employed in another professional area. For the purposes of accruing seniority under  
66 this subsection, employment as principal, supervisor or central office administrator, as defined in  
67 §18A-1-1 of this code, shall be considered one area of employment.

68 (j) Employment for a full employment term equals one year of seniority, but an employee  
69 may not accrue more than one year of seniority during any given fiscal year. Employment for less  
70 than the full employment term shall be prorated. If two or more employees with the same

71 certification establish an identical seniority date as a result of initial employment as a regular  
72 teacher on or after July 1, 2019, the priority between these employees shall be determined by a  
73 random selection system established by the employees and approved by the the county board. A  
74 board shall conduct the random selection within 30 days of the time the employees with the same  
75 certification establish an identical seniority date. All employees with an identical date and the  
76 same certification shall participate in the random selection. As long as the affected employees  
77 hold the identical seniority date within a certification, the initial random selection conducted by the  
78 board shall be permanent for the duration of the employment of the employees by the board. A  
79 random selection system established by the employees and approved by the county board shall  
80 be used to determine the priority if two or more employees accumulate identical seniority.  
81 Provided, That when two or more principals have accumulated identical seniority.

82       (k) All decisions on reductions in force shall be based on qualifications as set forth in a  
83 county board policy. Furthermore, for the purposes of this subsection and subsections (l) through  
84 (t), inclusive, of this section, the word "qualifications" means the qualifications set forth in county  
85 board policy and only means qualifications set forth in subsection (b) of this section to the extent  
86 those qualifications are set forth in county board policy: Provided, That in defining the word  
87 "qualifications" in its policy, the county board:

88           (1) Shall consider including the criteria set forth in subsection (b) of this section;  
89           (2) Shall consider other criteria set forth in subsection (b) of this section to the extent they  
90 are included in the county board policy only after considering personnel whose last performance  
91 evaluation conducted pursuant to §18A-2-12 or §18A-3C-2 of this code as applicable, is less than  
92 satisfactory; and

93           (3) May not include salary as one of the criteria in the definition.

94       (4) Whenever a county board is required to reduce the number of professional personnel  
95 in its employment, the employee with the least amount of seniority who is least qualified, as set  
96 forth in county board policy, shall be properly notified and released from employment pursuant to

97 the provisions of §18A-2-2 of this code. The provisions of this This subsection are is subject to  
98 the following:

99 (1) All persons employed in a certification area to be reduced who are employed under a  
100 temporary permit shall be properly notified and released before a fully certified employee in such  
101 a position is subject to release;

102 (2) Notwithstanding any provision of this code to the contrary, for any vacancy in an  
103 established, existing or newly created position that, on or before March 1, is known to exist for  
104 the ensuing school year, upon recommendation of the superintendent, the board shall appoint the  
105 successful applicant from among all qualified applicants. All employees subject to release shall  
106 be considered applicants for the positions for which they are qualified and shall be considered  
107 before posting such vacancies for application by nonemployees;

108 (3) An employee subject to release shall be employed in any other professional position  
109 where the employee is certified and was previously employed or to any lateral area for which the  
110 employee is certified, licensed or both: ~~if the employee's seniority is greater than the seniority of~~  
111 ~~any other employee in that area of certification, licensure or both~~ Provided, That the employee is  
112 the most qualified person for that position;

113 (4) If an employee subject to release holds certification, licensure or both in more than one  
114 lateral area and if the employee's ~~seniority is~~ qualifications are greater than the seniority  
115 qualifications of any other employee in one or more of those areas of certification, licensure, or  
116 both, the employee subject to release shall be employed in the professional position held by the  
117 employee ~~with the least seniority who is least qualified~~ in any of those areas of certification,  
118 licensure, or both; and

119 (5) If, prior to August 1 of the year, a reduction in force is approved, the reason for any  
120 particular reduction in force no longer exists as determined by the county board in its sole and  
121 exclusive judgment, the board shall rescind the reduction in force or transfer and shall notify the  
122 released employee in writing of his or her right to be restored to his or her position of employment.

123 Within five days of being so notified, the released employee shall notify the board, in writing, of  
124 his or her intent to resume his or her position of employment or the right to be restored shall  
125 terminate. Notwithstanding any other provision of this subdivision, if there is another employee on  
126 the preferred recall list with proper certification and ~~higher seniority has greater qualifications~~ that  
127 person shall be placed in the position restored as a result of the reduction in force being rescinded.

128 (f) (m) For the purpose of this article, all positions which meet the definition of "classroom

129 teacher" as defined in section one, article one of this chapter shall be lateral positions. For all  
130 other professional positions, the county board of education shall adopt a policy by October 31,  
131 1993, and may modify the policy thereafter as necessary, which defines which positions shall be  
132 lateral positions. In adopting the policy, the board ~~shall~~ may give consideration to the rank of each  
133 position in terms of title; nature of responsibilities; salary level; and certification, licensure or both,  
134 and along with the days in the period of employment.

135 (n) (o) All professional personnel whose ~~seniority lesser qualifications, as determined by~~  
136 county board policy, with the county board is insufficient to allow their retention by the county

137 board during a reduction in workforce shall be placed upon a preferred recall list. As to any  
138 professional position opening within the area where they had previously been employed or to any  
139 lateral area for which they have certification, licensure or both, the employee shall be recalled on  
140 the basis of ~~seniority qualifications~~ if no regular, full-time professional personnel, or those  
141 returning from leaves of absence with greater ~~seniority are qualified qualifications~~, apply for and  
142 accept the position.

143 (p) ~~Before position openings that are known or expected to extend for twenty~~

144 ~~consecutive employment days or longer for professional personnel may be filled by the board, the~~  
145 ~~board shall be required to notify all qualified professional personnel on the preferred list and give~~  
146 ~~them an opportunity to apply, but failure to apply shall not cause the employee to forfeit any right~~  
147 ~~to recall. The notice shall be sent by certified mail to the last known address of the employee and~~  
148 ~~it shall be the duty of each professional personnel to notify the board of continued availability~~

149 ~~annually, of any change in address or of any change in certification, licensure or both~~ The board  
150 shall annually notify professional personnel on the preferred list of the job application procedures  
151 and any websites used to advertise vacancies. The notice shall be sent by certified mail via the  
152 U.S. Postal Service to the last known address of the employee, and it shall be the duty of each  
153 professional person to notify the board of continued availability annually of any change in address,  
154 or of any change in certification, licensure or both.

155 (e) (p) Openings in established, existing, or newly created positions shall be processed as  
156 follows:

157 (1) Boards shall be required to post and date notices of each opening at least once. At  
158 their discretion, boards may post an opening for a position other than classroom teacher more  
159 than once in order to attract more qualified applicants. At their discretion, boards may post repost  
160 an opening for a classroom teacher one additional time after the first posting in order to attract  
161 more qualified applicants ~~only if fewer than three individuals apply during the first posting~~ subject  
162 to the following:

163 (A) Each notice shall be posted in conspicuous working places for all professional  
164 personnel to observe for at least five working days which may include any website maintained by  
165 the county board;

166 (B) At least one notice shall be posted within 20 working days of the position openings  
167 and shall include the job description;

168 (C) Any special criteria or skills that are required by the position shall be specifically stated  
169 in the job description and directly related to the performance of the job;

170 (D) Postings for vacancies made pursuant to this section shall be written so as to ensure  
171 that the largest possible pool of qualified applicants may apply; and

172 (E) Job postings may not require criteria which are not necessary for the successful  
173 performance of the job and may not be written with the intent to favor a specific applicant;

174 (2) No vacancy may be filled until after the five-day minimum posting period of the most

175 recent posted notice of the vacancy;

176 (3) If one or more applicants under all the postings for a vacancy meets the qualifications  
177 listed in the job posting, the successful applicant to fill the vacancy shall be selected by the board  
178 within 30 working days of the end of the first posting period;

179 (4) A position held by a teacher who is certified, licensed, or both, who has been issued a  
180 permit for full-time employment and is working toward certification in the permit area shall not be  
181 subject to posting if the certificate is awarded within five years; and

182 (5) Nothing provided herein may prevent the county board of education from eliminating a  
183 position due to lack of need.

184 (p) (q) Notwithstanding any other provision of the code to the contrary, where the total  
185 number of classroom teaching positions in an elementary school does not increase from one  
186 school year to the next, but there exists in that school a need to realign the number of teachers  
187 in one or more grade levels, kindergarten through six, teachers at the school may be reassigned  
188 to grade levels for which they are certified without that position being posted: *Provided*, That the  
189 employee and the county board mutually agree to the reassignment.

190 (q) (r) Reductions in classroom teaching positions in elementary schools shall be  
191 determined pursuant to the considerations set forth in county board policy and processed as  
192 follows:

193 (1) When the total number of classroom teaching positions in an elementary school needs  
194 to be reduced, the reduction shall be made on the basis of seniority qualifications with the least  
195 senior qualified classroom teacher being recommended for transfer; and

196 (2) When a specified grade level needs to be reduced and the least senior qualified  
197 employee in the school is not in that grade level, the senior least qualified classroom teacher in  
198 the grade level that needs to be reduced shall be reassigned to the position made vacant by the  
199 transfer of the senior least qualified classroom teacher in the school without that position being  
200 posted: *Provided*, That the employee is certified, licensed or both and agrees to the reassignment.

(r) (s) Any board failing to comply with the provisions of this article may be compelled to by mandamus and shall be liable to any party prevailing against the board for court costs reasonable attorney fees as determined and established by the court. Further, employees and promotion or employment in violation of this section shall be awarded the job, pay and any available benefits retroactive to the date of the violation and payable entirely from local funds. In addition, the board shall be liable to any party prevailing against the board for any court reporter fees, including copies of transcripts.

(s) The county board shall compile, update annually on July 1 and make available by electronic or other means to all employees a list of all professional personnel employed by the county, their areas of certification and their seniority.

(t) Notwithstanding any other provision of this code to the contrary, upon recommendation of the principal and approval by the classroom teacher and county board, a classroom teacher assigned to the school may at any time be assigned to a new or existing classroom teacher at the school without the position being posted.

(u) The amendments to this section during the 2019 regular session of the Legislature  
are effective for school years beginning on or after July 1, 2019, and the provisions of this  
section existing immediately prior to the 2019 regular session of the Legislature remain in effect  
for school years beginning prior to July 1, 2019.

#### §18A-4-8a. Service personnel minimum monthly salaries.

(c) The minimum monthly pay for each service employee shall be as follows:

(1) For school year 2018–2019, and continuing thereafter, the minimum monthly pay for service employee whose employment is for a period of more than three and one-half hours shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule the minimum monthly pay for each service employee whose employment is for a period of and one-half hours or less a day shall be at least one-half the amount indicated in the State Pay Scale Pay Grade set forth in this subdivision: Provided, That for school year 2019-

8 2020, and continuing thereafter, the minimum monthly pay for each service employee whose  
9 employment is for a period of more than three and one-half hours a day shall be at least the  
10 amounts indicated in the State Minimum Pay Scale Pay Grade Schedule II and the minimum  
11 monthly pay for each service employee whose employment is for a period of three and one-half  
12 hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay  
13 Scale Pay Grade set forth in this subdivision.

14 STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE I

Years Exp.	PAY GRADE							
	A	B	C	D	E	F	G	H
0	1,770	1,791	1,833	1,886	1,939	2,002	2,034	2,107
1	1,802	1,824	1,865	1,918	1,972	2,035	2,066	2,140
2	1,835	1,856	1,898	1,951	2,004	2,067	2,099	2,172
3	1,867	1,889	1,931	1,984	2,037	2,100	2,132	2,205
4	1,900	1,922	1,963	2,016	2,069	2,133	2,164	2,239
5	1,933	1,954	1,996	2,049	2,102	2,165	2,197	2,271
6	1,965	1,987	2,030	2,082	2,135	2,198	2,230	2,304
7	1,999	2,019	2,062	2,114	2,167	2,231	2,262	2,337
8	2,032	2,052	2,095	2,147	2,200	2,263	2,295	2,369
9	2,064	2,085	2,128	2,181	2,233	2,296	2,327	2,402
10	2,097	2,118	2,160	2,213	2,265	2,330	2,361	2,435
11	2,130	2,151	2,193	2,246	2,298	2,362	2,394	2,467
12	2,162	2,184	2,225	2,279	2,332	2,395	2,426	2,500
13	2,195	2,216	2,258	2,311	2,364	2,427	2,459	2,533
14	2,228	2,249	2,291	2,344	2,397	2,460	2,492	2,565
15	2,260	2,282	2,323	2,376	2,429	2,493	2,524	2,598
16	2,293	2,314	2,356	2,409	2,462	2,525	2,557	2,631
17	2,325	2,347	2,390	2,442	2,495	2,558	2,590	2,664
18	2,358	2,380	2,422	2,474	2,527	2,591	2,622	2,697

19	2,392	2,412	2,455	2,507	2,560	2,623	2,655	2,729
20	2,424	2,445	2,488	2,541	2,593	2,656	2,688	2,763
21	2,457	2,477	2,520	2,573	2,625	2,689	2,720	2,797
22	2,490	2,511	2,553	2,606	2,658	2,722	2,754	2,829
23	2,522	2,544	2,586	2,639	2,692	2,756	2,788	2,863
24	2,555	2,576	2,618	2,671	2,724	2,790	2,821	2,897
25	2,588	2,609	2,651	2,704	2,758	2,822	2,855	2,929
26	2,620	2,642	2,683	2,738	2,792	2,856	2,887	2,963
27	2,653	2,674	2,716	2,770	2,824	2,888	2,921	2,996
28	2,686	2,707	2,750	2,804	2,858	2,922	2,955	3,030
29	2,718	2,741	2,783	2,836	2,891	2,956	2,987	3,064
30	2,752	2,773	2,817	2,870	2,924	2,988	3,021	3,097
31	2,785	2,807	2,851	2,904	2,958	3,022	3,055	3,130
32	2,819	2,840	2,883	2,937	2,990	3,056	3,087	3,164
33	2,853	2,873	2,917	2,971	3,024	3,088	3,121	3,197
34	2,885	2,907	2,951	3,005	3,058	3,122	3,155	3,230
35	2,919	2,941	2,983	3,037	3,090	3,156	3,188	3,264
36	2,953	2,974	3,017	3,071	3,125	3,189	3,222	3,296
37	2,985	3,008	3,051	3,105	3,159	3,223	3,255	3,330
38	3,019	3,040	3,083	3,137	3,191	3,256	3,288	3,364
39	3,053	3,074	3,117	3,171	3,225	3,289	3,322	3,396
40	3,085	3,108	3,150	3,204	3,259	3,323	3,355	3,430

15

16

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE II

<u>Years Exp.</u>	<u>PAY GRADE</u>							
	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>	<u>F</u>	<u>G</u>	<u>H</u>
<u>0</u>	<u>1,885</u>	<u>1,906</u>	<u>1,948</u>	<u>2,001</u>	<u>2,054</u>	<u>2,117</u>	<u>2,149</u>	<u>2,222</u>
<u>1</u>	<u>1,917</u>	<u>1,939</u>	<u>1,980</u>	<u>2,033</u>	<u>2,087</u>	<u>2,150</u>	<u>2,181</u>	<u>2,255</u>
<u>2</u>	<u>1,950</u>	<u>1,971</u>	<u>2,013</u>	<u>2,066</u>	<u>2,119</u>	<u>2,182</u>	<u>2,214</u>	<u>2,287</u>
<u>3</u>	<u>1,982</u>	<u>2,004</u>	<u>2,046</u>	<u>2,099</u>	<u>2,152</u>	<u>2,215</u>	<u>2,247</u>	<u>2,320</u>
<u>4</u>	<u>2,015</u>	<u>2,037</u>	<u>2,078</u>	<u>2,131</u>	<u>2,184</u>	<u>2,248</u>	<u>2,279</u>	<u>2,354</u>
<u>5</u>	<u>2,048</u>	<u>2,069</u>	<u>2,111</u>	<u>2,164</u>	<u>2,217</u>	<u>2,280</u>	<u>2,312</u>	<u>2,386</u>

<u>6</u>	<u>2,080</u>	<u>2,102</u>	<u>2,145</u>	<u>2,197</u>	<u>2,250</u>	<u>2,313</u>	<u>2,345</u>	<u>2,419</u>
<u>7</u>	<u>2,114</u>	<u>2,134</u>	<u>2,177</u>	<u>2,229</u>	<u>2,282</u>	<u>2,346</u>	<u>2,377</u>	<u>2,452</u>
<u>8</u>	<u>2,147</u>	<u>2,167</u>	<u>2,210</u>	<u>2,262</u>	<u>2,315</u>	<u>2,378</u>	<u>2,410</u>	<u>2,484</u>
<u>9</u>	<u>2,179</u>	<u>2,200</u>	<u>2,243</u>	<u>2,296</u>	<u>2,348</u>	<u>2,411</u>	<u>2,442</u>	<u>2,517</u>
<u>10</u>	<u>2,212</u>	<u>2,233</u>	<u>2,275</u>	<u>2,328</u>	<u>2,380</u>	<u>2,445</u>	<u>2,476</u>	<u>2,550</u>
<u>11</u>	<u>2,245</u>	<u>2,266</u>	<u>2,308</u>	<u>2,361</u>	<u>2,413</u>	<u>2,477</u>	<u>2,509</u>	<u>2,582</u>
<u>12</u>	<u>2,277</u>	<u>2,299</u>	<u>2,340</u>	<u>2,394</u>	<u>2,447</u>	<u>2,510</u>	<u>2,541</u>	<u>2,615</u>
<u>13</u>	<u>2,310</u>	<u>2,331</u>	<u>2,373</u>	<u>2,426</u>	<u>2,479</u>	<u>2,542</u>	<u>2,574</u>	<u>2,648</u>
<u>14</u>	<u>2,343</u>	<u>2,364</u>	<u>2,406</u>	<u>2,459</u>	<u>2,512</u>	<u>2,575</u>	<u>2,607</u>	<u>2,680</u>
<u>15</u>	<u>2,375</u>	<u>2,397</u>	<u>2,438</u>	<u>2,491</u>	<u>2,544</u>	<u>2,608</u>	<u>2,639</u>	<u>2,713</u>
<u>16</u>	<u>2,408</u>	<u>2,429</u>	<u>2,471</u>	<u>2,524</u>	<u>2,577</u>	<u>2,640</u>	<u>2,672</u>	<u>2,746</u>
<u>17</u>	<u>2,440</u>	<u>2,462</u>	<u>2,505</u>	<u>2,557</u>	<u>2,610</u>	<u>2,673</u>	<u>2,705</u>	<u>2,779</u>
<u>18</u>	<u>2,473</u>	<u>2,495</u>	<u>2,537</u>	<u>2,589</u>	<u>2,642</u>	<u>2,706</u>	<u>2,737</u>	<u>2,812</u>
<u>19</u>	<u>2,507</u>	<u>2,527</u>	<u>2,570</u>	<u>2,622</u>	<u>2,675</u>	<u>2,738</u>	<u>2,770</u>	<u>2,844</u>
<u>20</u>	<u>2,539</u>	<u>2,560</u>	<u>2,603</u>	<u>2,656</u>	<u>2,708</u>	<u>2,771</u>	<u>2,803</u>	<u>2,878</u>
<u>21</u>	<u>2,572</u>	<u>2,592</u>	<u>2,635</u>	<u>2,688</u>	<u>2,740</u>	<u>2,804</u>	<u>2,835</u>	<u>2,912</u>
<u>22</u>	<u>2,605</u>	<u>2,626</u>	<u>2,668</u>	<u>2,721</u>	<u>2,773</u>	<u>2,837</u>	<u>2,869</u>	<u>2,944</u>
<u>23</u>	<u>2,637</u>	<u>2,659</u>	<u>2,701</u>	<u>2,754</u>	<u>2,807</u>	<u>2,871</u>	<u>2,903</u>	<u>2,978</u>
<u>24</u>	<u>2,670</u>	<u>2,691</u>	<u>2,733</u>	<u>2,786</u>	<u>2,839</u>	<u>2,905</u>	<u>2,936</u>	<u>3,012</u>
<u>25</u>	<u>2,703</u>	<u>2,724</u>	<u>2,766</u>	<u>2,819</u>	<u>2,873</u>	<u>2,937</u>	<u>2,970</u>	<u>3,044</u>
<u>26</u>	<u>2,735</u>	<u>2,757</u>	<u>2,798</u>	<u>2,853</u>	<u>2,907</u>	<u>2,971</u>	<u>3,002</u>	<u>3,078</u>
<u>27</u>	<u>2,768</u>	<u>2,789</u>	<u>2,831</u>	<u>2,885</u>	<u>2,939</u>	<u>3,003</u>	<u>3,036</u>	<u>3,111</u>
<u>28</u>	<u>2,801</u>	<u>2,822</u>	<u>2,865</u>	<u>2,919</u>	<u>2,973</u>	<u>3,037</u>	<u>3,070</u>	<u>3,145</u>
<u>29</u>	<u>2,833</u>	<u>2,856</u>	<u>2,898</u>	<u>2,951</u>	<u>3,006</u>	<u>3,071</u>	<u>3,102</u>	<u>3,179</u>
<u>30</u>	<u>2,867</u>	<u>2,888</u>	<u>2,932</u>	<u>2,985</u>	<u>3,039</u>	<u>3,103</u>	<u>3,136</u>	<u>3,212</u>
<u>31</u>	<u>2,900</u>	<u>2,922</u>	<u>2,966</u>	<u>3,019</u>	<u>3,073</u>	<u>3,137</u>	<u>3,170</u>	<u>3,245</u>
<u>32</u>	<u>2,934</u>	<u>2,955</u>	<u>2,998</u>	<u>3,052</u>	<u>3,105</u>	<u>3,171</u>	<u>3,202</u>	<u>3,279</u>
<u>33</u>	<u>2,968</u>	<u>2,988</u>	<u>3,032</u>	<u>3,086</u>	<u>3,139</u>	<u>3,203</u>	<u>3,236</u>	<u>3,312</u>
<u>34</u>	<u>3,000</u>	<u>3,022</u>	<u>3,066</u>	<u>3,120</u>	<u>3,173</u>	<u>3,237</u>	<u>3,270</u>	<u>3,345</u>
<u>35</u>	<u>3,034</u>	<u>3,056</u>	<u>3,098</u>	<u>3,152</u>	<u>3,205</u>	<u>3,271</u>	<u>3,303</u>	<u>3,379</u>
<u>36</u>	<u>3,068</u>	<u>3,089</u>	<u>3,132</u>	<u>3,186</u>	<u>3,240</u>	<u>3,304</u>	<u>3,337</u>	<u>3,411</u>
<u>37</u>	<u>3,100</u>	<u>3,123</u>	<u>3,166</u>	<u>3,220</u>	<u>3,274</u>	<u>3,338</u>	<u>3,370</u>	<u>3,445</u>
<u>38</u>	<u>3,134</u>	<u>3,155</u>	<u>3,198</u>	<u>3,252</u>	<u>3,306</u>	<u>3,371</u>	<u>3,403</u>	<u>3,479</u>
<u>39</u>	<u>3,168</u>	<u>3,189</u>	<u>3,232</u>	<u>3,286</u>	<u>3,340</u>	<u>3,404</u>	<u>3,437</u>	<u>3,511</u>
<u>40</u>	<u>3,200</u>	<u>3,223</u>	<u>3,265</u>	<u>3,319</u>	<u>3,374</u>	<u>3,438</u>	<u>3,470</u>	<u>3,545</u>

17  
18 (2) Each service employee shall receive the amount prescribed in the State Minimum Pay  
19 Scale Pay Grade in accordance with the provisions of this subsection according to their class title  
20 and pay grade as set forth in this subdivision:

	CLASS TITLE	PAY GRADE
21		
22	Accountant I .....	D
23	Accountant II .....	E
24	Accountant III .....	F
25	Accounts Payable Supervisor .....	G
26	Aide I .....	A
27	Aide II .....	B
28	Aide III .....	C
29	Aide IV .....	D
30	Audiovisual Technician .....	C
31	Auditor .....	G
32	Autism Mentor .....	F
33	Braille Specialist .....	E
34	Bus Operator .....	D
35	Buyer .....	F
36	Cabinetmaker .....	G
37	Cafeteria Manager .....	D
38	Carpenter I .....	E
39	Carpenter II .....	F
40	Chief Mechanic .....	G
41	Clerk I .....	B
42	Clerk II .....	C
43	Computer Operator .....	E
44	Cook I .....	A
45	Cook II .....	B
46	Cook III .....	C

47	Crew Leader .....	F
48	Custodian I .....	A
49	Custodian II .....	B
50	Custodian III .....	C
51	Custodian IV .....	D
52	Director or Coordinator of Services .....	H
53	Draftsman .....	D
54	Early Childhood Classroom Assistant Teacher I .....	E
55	Early Childhood Classroom Assistant Teacher II .....	E
56	Early Childhood Classroom Assistant Teacher III .....	F
57	Educational Sign Language Interpreter I .....	F
58	Educational Sign Language Interpreter II .....	G
59	Electrician I .....	F
60	Electrician II .....	G
61	Electronic Technician I .....	F
62	Electronic Technician II .....	G
63	Executive Secretary .....	G
64	Food Services Supervisor .....	G
65	Foreman .....	G
66	General Maintenance .....	C
67	Glazier .....	D
68	Graphic Artist .....	D
69	Groundsman .....	B
70	Handyman .....	B
71	Heating and Air Conditioning Mechanic I .....	E
72	Heating and Air Conditioning Mechanic II .....	G

73	Heavy Equipment Operator .....	E
74	Inventory Supervisor .....	D
75	Key Punch Operator .....	B
76	Licensed Practical Nurse .....	F
77	Locksmith .....	G
78	Lubrication Man .....	C
79	Machinist .....	F
80	Mail Clerk .....	D
81	Maintenance Clerk .....	C
82	Mason .....	G
83	Mechanic .....	F
84	Mechanic Assistant .....	E
85	Office Equipment Repairman I .....	F
86	Office Equipment Repairman II .....	G
87	Painter .....	E
88	Paraprofessional .....	F
89	Payroll Supervisor .....	G
90	Plumber I .....	E
91	Plumber II .....	G
92	Printing Operator .....	B
93	Printing Supervisor .....	D
94	Programmer .....	H
95	Roofing/Sheet Metal Mechanic .....	F
96	Sanitation Plant Operator .....	G
97	School Bus Supervisor .....	E
98	Secretary I .....	D

99	Secretary II .....	E
100	Secretary III .....	F
101	Sign Support Specialist .....	E
102	Supervisor of Maintenance .....	H
103	Supervisor of Transportation .....	H
104	Switchboard Operator-Receptionist .....	D
105	Truck Driver .....	D
106	Warehouse Clerk .....	C
107	Watchman .....	B
108	Welder .....	F
109	WVEIS Data Entry and Administrative Clerk .....	B
110	(b) An additional \$12 per month is added to the minimum monthly pay of each service	
111	person who holds a high school diploma or its equivalent.	
112	(c) An additional \$11 per month also is added to the minimum monthly pay of each service	
113	person for each of the following:	
114	(1) A service person who holds 12 college hours or comparable credit obtained in a trade	
115	or vocational school as approved by the state board;	
116	(2) A service person who holds 24 college hours or comparable credit obtained in a trade	
117	or vocational school as approved by the state board;	
118	(3) A service person who holds 36 college hours or comparable credit obtained in a trade	
119	or vocational school as approved by the state board;	
120	(4) A service person who holds 48 college hours or comparable credit obtained in a trade	
121	or vocational school as approved by the state board;	
122	(5) A service employee who holds 60 college hours or comparable credit obtained in a	
123	trade or vocational school as approved by the state board;	

124 (6) A service person who holds 72 college hours or comparable credit obtained in a trade

125 or vocational school as approved by the state board;

126 (7) A service person who holds 84 college hours or comparable credit obtained in a trade

127 or vocational school as approved by the state board;

128 (8) A service person who holds 96 college hours or comparable credit obtained in a trade

129 or vocational school as approved by the state board;

130 (9) A service person who holds 108 college hours or comparable credit obtained in a trade

131 or vocational school as approved by the state board;

132 (10) A service person who holds 120 college hours or comparable credit obtained in a

133 trade or vocational school as approved by the state board.

134 (d) An additional \$40 per month also is added to the minimum monthly pay of each service

135 person for each of the following:

136 (1) A service person who holds an associate's degree;

137 (2) A service person who holds a bachelor's degree;

138 (3) A service person who holds a master's degree;

139 (4) A service person who holds a doctorate degree.

140 (e) An additional \$11 per month is added to the minimum monthly pay of each service

141 person for each of the following:

142 (1) A service person who holds a bachelor's degree plus 15 college hours;

143 (2) A service person who holds a master's degree plus 15 college hours;

144 (3) A service person who holds a master's degree plus 30 college hours;

145 (4) A service person who holds a master's degree plus 45 college hours; and

146 (5) A service person who holds a master's degree plus 60 college hours.

147 (f) ~~To meet the objective of salary equity among the counties, each~~ Each service person

148 is paid ~~an equity~~ a supplement, as set forth in §18A-4-5 of this code, of \$164 per month, subject

149 to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed

150 in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed  
151 in this section and article, and any county supplement in effect in a county pursuant to §18A-4-5b  
152 of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state  
153 minimum salaries for service personnel.

154 (g) When any part of a school service person's daily shift of work is performed between  
155 the hours of 6:00 p.m. and 5:00 a.m. the following day, the employee is paid no less than an  
156 additional \$10 per month and one half of the pay is paid with local funds.

157 (h) Any service person required to work on any legal school holiday is paid at a rate one  
158 and one-half times the person's usual hourly rate.

159 (i) Any full-time service personnel required to work in excess of their normal working day  
160 during any week which contains a school holiday for which they are paid is paid for the additional  
161 hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate  
162 and paid entirely from county board funds.

163 (j) A service person may not have his or her daily work schedule changed during the school  
164 year without the employee's written consent and the person's required daily work hours may not  
165 be changed to prevent the payment of time and one-half wages or the employment of another  
166 employee.

167 (k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of  
168 this code is no less than one-seventh of the person's daily total salary for each hour the person  
169 is involved in performing the assignment and paid entirely from local funds: *Provided*, That an  
170 alternative minimum hourly rate of pay for performing extra duty assignments within a particular  
171 category of employment may be used if the alternate hourly rate of pay is approved both by the  
172 county board and by the affirmative vote of a two-thirds majority of the regular full-time persons  
173 within that classification category of employment within that county: *Provided, however*, That the  
174 vote is by secret ballot if requested by a service person within that classification category within  
175 that county. The salary for any fraction of an hour the employee is involved in performing the

176 assignment is prorated accordingly. When performing extra duty assignments, persons who are  
177 regularly employed on a one-half day salary basis shall receive the same hourly extra duty  
178 assignment pay computed as though the person were employed on a full-day salary basis.

179 (l) The minimum pay for any service personnel engaged in the removal of asbestos  
180 material or related duties required for asbestos removal is their regular total daily rate of pay and  
181 no less than an additional \$3 per hour or no less than \$5 per hour for service personnel  
182 supervising asbestos removal responsibilities for each hour these employees are involved in  
183 asbestos-related duties. Related duties required for asbestos removal include, but are not limited  
184 to, travel, preparation of the work site, removal of asbestos, decontamination of the work site,  
185 placing and removal of equipment, and removal of structures from the site. If any member of an  
186 asbestos crew is engaged in asbestos-related duties outside of the employee's regular  
187 employment county, the daily rate of pay is no less than the minimum amount as established in  
188 the employee's regular employment county for asbestos removal and an additional \$30 per each  
189 day the employee is engaged in asbestos removal and related duties. The additional pay for  
190 asbestos removal and related duties shall be payable entirely from county funds. Before service  
191 personnel may be used in the removal of asbestos material or related duties, they shall have  
192 completed a federal Environmental Protection Act-approved training program and be licensed.  
193 The employer shall provide all necessary protective equipment and maintain all records required  
194 by the Environmental Protection Act.

195 (m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code,  
196 an aide is considered to be exercising the authority of a supervisory aide and control over pupils  
197 if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or  
198 children when not under the direct supervision of a certified professional person within the  
199 classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever  
200 supervision is required. For purposes of this section, "under the direct supervision of a certified

201 professional person" means that certified professional person is present, with and accompanying  
202 the aide.

**§18A-4-10. Personal leave for illness and other causes; leave banks; substitutes.**

203 (a) *Personal Leave.*

204 (1) ~~At the beginning of the employment term, any~~ Any full-time employee of a county board  
205 is entitled annually to accrue to at least one and one-half days personal leave for each  
206 employment month or major fraction thereof in the employee's employment term. Personal leave  
207 is accrued at the end of each pay period based on a ten month pay calendar or on the last workday  
208 for separating employees. Unused leave shall be accumulative without limitation and is  
209 transferable within the state. A change in job assignment during the school year does not affect  
210 the employee's rights or benefits.

211 (2) A regular full-time employee who is absent from assigned duties due to accident,  
212 sickness, death in the immediate family, or life threatening illness of the employee's spouse,  
213 parents or child, or other cause authorized or approved by the board, shall be paid the full salary  
214 from his or her regular budgeted salary appropriation during the period which the employee is  
215 absent, but not to exceed the total amount of leave ~~to which the employee is entitled has accrued.~~

216 (3) Each employee is permitted to use three days of leave annually without regard to the  
217 cause for the absence. Personal leave without cause may not be used on consecutive work days  
218 unless authorized or approved by the employee's principal or immediate supervisor, as  
219 appropriate. The employee shall give notice of leave without cause to the principal or immediate  
220 supervisor at least 24 hours in advance, except that in the case of sudden and unexpected  
221 circumstances, notice shall be given as soon as reasonably practicable. The principal or  
222 immediate supervisor may deny use of the day if, at the time notice is given, either 15 percent of  
223 the employees or three employees, whichever is greater, under the supervision of the principal or  
224 immediate supervisor, have previously given notice of their intention to use that day for leave.  
225 Personal leave may not be used in connection with a concerted work stoppage or strike. Where

226 the cause for leave originated prior to the beginning of the employment term, the employee shall  
227 be paid for time lost after the start of the employment term, but not to exceed the total amount of  
228 leave the employee has accrued. If an employee uses personal leave which the employee has  
229 not yet accumulated on a monthly basis and subsequently leaves the employment, the employee  
230 is required to reimburse the board for the salary or wages paid for the unaccumulated leave.

231 (4) The State Board shall maintain a rule to restrict the payment of personal leave benefits  
232 and the charging of personal leave time used to an employee receiving a workers' compensation  
233 benefit from a claim filed against and billed to the county board by which the person is employed.  
234 If an employee is awarded this benefit, the employee shall receive personal leave compensation  
235 only to the extent the compensation is required, when added to the workers' compensation  
236 benefit, to equal the amount of compensation regularly paid the employee. If personal leave  
237 compensation equal to the employee's regular pay is paid prior to the award of the workers'  
238 compensation benefit, the amount which, when added to the benefit, is in excess of the  
239 employee's regular pay shall be deducted from the employee's subsequent pay. The employee's  
240 accrued personal leave days shall be charged only for such days as equal the amount of personal  
241 leave compensation required to compensate the employee at the employee's regular rate of pay.

242 (5) The county board may establish reasonable rules for reporting and verification of  
243 absences for cause. If any error in reporting absences occurs, the county board may make  
244 necessary salary adjustments:

245 (A) In the next pay after the employee has returned to duty; or  
246 (B) In the final pay if the absence occurs during the last month of the employment term.

247 (b) *Leave Banks.*

248 (1) Each county board shall establish a personal leave bank that is available to all school  
249 personnel. The board may establish joint or separate banks for professional personnel and school  
250 service personnel. Each employee may contribute up to two days of personal leave per school  
251 year. An employee may not be coerced or compelled to contribute to a personal leave bank.

(2) The personal leave bank shall be established and operated pursuant to a rule adopted

by the county board. The rule:

(A) May limit the maximum number of days used by an employee;

(B) Shall limit the use of leave bank days to an active employee with fewer than five days

accumulated personal leave who is absent from work due to accident or illness of the employee;

and

(C) Shall prohibit the use of days to:

(i) Qualify for or add to service for any retirement system administered by the state; or

(ii) Extend insurance coverage pursuant to §5-16-13 of this code.

(D) Shall require that each personal leave day contributed:

(i) Is deducted from the number of personal leave days to which the donor employee is

entitled by this section;

(ii) Is not deducted from the personal leave days without cause to which a donor employee

is entitled if sufficient general personal leave days are otherwise available to the donor employee;

(iii) Is credited to the receiving employee as one full personal leave day;

(iv) May not be credited for more or less than a full day by calculating the value of the

leave according to the hourly wage of each employee; and

(v) May be used only for an absence due to the purpose for which the leave was

transferred. Any transferred days remaining when the catastrophic medical emergency ends

revert back to the leave bank.

(3) The administration, subject to county board approval, may use its discretion as to the

need for a substitute where limited absence may prevail, when an allowable absence does not:

(i) Directly affect the instruction of the students; or

(ii) Require a substitute employee because of the nature of the work and the duration of

the cause for the absence.

(4) If funds in any fiscal year, including transfers, are insufficient to pay the full cost of

278 substitutes for meeting the provisions of this section, the remainder shall be paid on or before  
279 August 31 from the budget of the next fiscal year.

280 (5) A county board may supplement the leave provisions in any manner it considers  
281 advisable in accordance with applicable rules of the state Board and the provisions of this chapter  
282 and chapter eighteen of this code.

283 (c) (1) Any full-time employee of a county board who has not utilized more than four  
284 personal leave days during the 200-day employment term shall receive a bonus of \$500 at the  
285 end of the school year.

286 (2) If the appropriations to the Department of Education for this purpose are insufficient to  
287 compensate all applicable full-time employees, the Department of Education shall request a  
288 supplemental appropriation in an amount sufficient to compensate all applicable employees. This  
289 payment may not be counted as part of the final average salary for the purpose of calculating  
290 retirement.

291 (d) The amendments to this section during the 2019 regular session of the Legislature  
292 shall be effective for school years beginning on or after July 1, 2019, and the provisions of this  
293 section existing immediately prior to the 2019 regular session of the Legislature remain in effect  
294 for school years beginning prior to July 1, 2019.

## CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID.

### ARTICLE 4. UNDERWOOD-SMITH TEACHER TEACHING SCHOLARSHIP SCHOLARS PROGRAM.

#### §18C-4-1. Scholarship and loan assistance fund Underwood-Smith Teaching Scholars Program Fund created; purposes; funding.

1 (a) It is the purpose of this article and article four a of this chapter to improve the quality  
2 of education in the public schools of West Virginia by encouraging and enabling individuals who  
3 have demonstrated outstanding academic abilities to pursue teaching careers in the public

4       schools in this state in mathematics, science, or special education at the ~~preschool~~ elementary,  
5       middle, or secondary levels. ~~in the public schools of this state. In addition, of those individuals~~  
6       who have demonstrated outstanding academic abilities to pursue teaching careers, for  
7       scholarships initially awarded for the fall semester, 2014, and thereafter Particular efforts shall be  
8       made in the scholarship selection criteria and procedures to reflect the state's present and  
9       projected ~~subject and geographic areas of critical need.~~

10       (b) In consultation with the State Board of Education and the State Superintendent of  
11       Schools the commission shall propose legislative rules in accordance with the provisions of ~~article~~  
12       ~~three a, chapter twenty-nine a of this code~~ §29A-3A-1, *et seq.* The rules shall provide for the  
13       administration of the Underwood-Smith Teacher Scholarship and Loan Assistance programs  
14       Teaching Scholars Program by the vice chancellor for administration in furtherance of the  
15       purposes of this article, ~~and article four a of this chapter~~ including, but not limited to, the following:

16           (1) Establishing scholarship selection criteria and procedures;  
17           (2) Establishing criteria and procedures for identifying ~~subject areas~~ public schools or  
18       geographic areas in critical need of teachers;  
19           (3) Requiring scholarship recipients to teach in a public school in this state in mathematics,  
20       science, or special education at the elementary, middle, or secondary level in a geographic area  
21       of critical need pursuant to the provisions of §18C-4-3 of this code;

22           Awarding loan assistance, including establishing conditions under which partial awards  
23       may be granted for less than a full year of teaching in an area of critical need;

24           (4) Determining eligibility for loan assistance renewal;

25           (5) Establishing procedures ensuring that loan assistance funds are paid directly to the  
26       proper lending entity; and

27           (6) (4) Establishing criteria for determining participant compliance or noncompliance with  
28       terms of the agreement and establishing procedures to address noncompliance including, but not  
29       limited to, repayment, deferral and excusal; and

30                   (7) (5) Developing model agreements.

31                   (c) The commission and State Board of Education jointly shall ensure that Underwood-  
32                   Smith Teaching Scholars recipients receive additional academic support and training from  
33                   mathematics, science, or special education mentors beginning with the freshman year and  
34                   continuing through degree completion and the teaching obligation.

35                   (d) There is created in the State Treasury a special revolving fund in the State Treasury  
36                   to be known as The Underwood-Smith Teacher Scholarship and Loan Assistance Fund is  
37                   continued in the State Treasury as a special revolving fund and is hereafter to be known as the  
38                   Underwood-Smith Teaching Scholars Program Fund. The fund shall be administered by the  
39                   vice chancellor for administration solely for granting scholarships and loan assistance to teachers  
40                   and prospective teachers in accordance with this article. and article four-a of this chapter. Any  
41                   moneys which may be appropriated by the Legislature, or received by the vice chancellor for  
42                   administration from other sources, for the purposes of this article and article four-a of this chapter  
43                   shall be deposited in the fund. Any moneys remaining in the fund at the close of a fiscal year shall  
44                   be carried forward for use in the next fiscal year. Any moneys repaid to the vice chancellor for  
45                   administration by reason of default of a scholarship or loan assistance agreement under this  
46                   article or article four-a of this chapter also shall be deposited in the fund. Fund balances shall be  
47                   invested with the state's consolidated investment fund, and any and all interest earnings on these  
48                   investments shall be used solely for the purposes for which moneys invested were appropriated  
49                   or otherwise received.

50                   (e) The vice chancellor for administration may accept and expend any gift, grant,  
51                   contribution, bequest, endowment, or other money for the purposes of this article and article four-  
52                   a of this chapter and shall make a reasonable effort to encourage external support for the  
53                   scholarship and loan assistance programs program.

54                   (f) For the purpose of encouraging support for the scholarship and loan assistance  
55                   programs program from private sources, the vice chancellor for administration may set aside no

56 more than half of the funds appropriated by the Legislature for Underwood-Smith Teacher  
57 Scholarships and Loan Assistance Teaching Scholar awards to be used to match two state dollars  
58 to each private dollar from a nonstate source contributed on behalf of a specific institution of  
59 higher education in this state.

60 (g) In recognition of the high academic achievement necessary to receive an award under  
61 this article, each recipient shall be distinguished as an "Underwood-Smith Teaching Scholar" in a  
62 manner befitting the distinction as determined by the commission.

**§18C-4-2. Selection criteria and procedures for awarding scholarships.**

1 (a) The Governor shall designate the Higher Education Student Financial Aid Advisory  
2 Board created by section five, article one of this chapter §18C-1-5 of this code to shall select the  
3 recipients of Underwood-Smith teacher scholarships Teaching Scholars who meet the eligibility  
4 criteria set forth in subsection (b) of this section.

5 (b) Eligibility for an Underwood-Smith Teacher Scholarship Teaching Scholars award shall  
6 be limited to students who meet the following criteria:

7 (1) Have graduated or are graduating from high school and rank in the top ten percent of  
8 their graduating class or the top ten percent statewide of those West Virginia students taking the  
9 ACT test with a cumulative grade point average of at least 3.25 on a 4.0 scale, and:

10 (A) For mathematics and science majors, met the college algebra ready assessment  
11 standards and college readiness English, reading, and writing standards as established by the  
12 commission; or

13 (B) For special education majors, met the college statistics readiness standards and  
14 college readiness English, reading, and writing standards as established by the commission;

15 (2) Agree to teach in the subject area of mathematics, science or special education in a  
16 public school in the state in a geographic area of critical need pursuant to the provisions of §18C-  
17 4-3 of this code; and

18 (3) In the case of a student pursuing a certificate in special education, have a cumulative

19 grade point average of at least 3.25 on a 4.0 scale possible scale of four after successfully  
20 completing ~~two years of course work~~ at an approved institution of higher education in West  
21 Virginia; ~~are public school aides or paraprofessionals as defined in section eight, article four,~~  
22 ~~chapter eighteen a of this code and who have a cumulative grade point average of at least 3.25~~  
23 ~~on a possible scale of four after successfully completing two years of course work at an approved~~  
24 ~~institution of higher education in West Virginia; or~~

25 (4) ~~Are graduate students at the master's degree level; who have graduated or are~~  
26 ~~graduating in the top ten percent of their college graduating class.~~

27 (c) To be eligible for an award, a non-citizen of the United States shall hold a valid  
28 Employment Authorization Document (EAD), or work permit, issued by the United States  
29 Citizenship and Immigration Services (USCIS).

30 (d) In accordance with the rules of the commission, the vice chancellor for administration  
31 shall develop criteria and procedures for the selection of scholarship recipients. The selection  
32 criteria shall reflect the purposes of this article and shall specify the areas in which particular  
33 efforts will be made in the selection of scholars as set forth in section one of this article §18C-4-1  
34 of this code. Selection procedures and criteria also may include, but are not limited to, the grade  
35 point average of the applicant, involvement in extracurricular activities, financial need, current  
36 academic standing and an expression of interest in teaching as demonstrated by an essay written  
37 by the applicant. These criteria and procedures further may require the applicant to furnish letters  
38 of recommendation from teachers and others. It is the intent of the Legislature that academic  
39 abilities be the primary criteria for selecting scholarship recipients. ~~However, the qualified~~  
40 ~~applicants with the highest academic abilities who intend to pursue teaching careers in areas of~~  
41 ~~critical need and shortage pursuant to section one of this article shall be given priority.~~

42 (d) (e) In developing the selection criteria and procedures to be used by the Higher  
43 Education Student Financial Aid Advisory Board, the vice chancellor for administration shall solicit  
44 the views of public and private education agencies and institutions and other interested parties.

45 Input from interested parties shall be solicited by means of written and published selection criteria  
46 and procedures in final form for implementation and may be solicited by means of public hearings  
47 on the present and projected teacher needs of the state or any other methods the vice chancellor  
48 for administration may determine to be appropriate to gather the information.

49 (e) (f) The vice chancellor for administration shall make application forms for Underwood-  
50 Smith ~~Teacher Scholarships~~ Teaching Scholars available to public and private high schools in the  
51 state and in other locations convenient to applicants, parents and others, and shall make an effort  
52 to attract students from low-income backgrounds, ethnic or racial minority students, students with  
53 disabilities, and women or minority students who show interest in pursuing teaching careers in  
54 mathematics, ~~and science~~ and special education and who are under-represented in those fields.

#### **§18C-4-3. Scholarship agreement.**

1 (a) Each recipient of an Underwood-Smith ~~teacher scholarship~~ Teaching Scholars award  
2 shall enter into an agreement with the vice chancellor for administration under which the recipient  
3 shall meet the following conditions:

4 (1) Provide the commission with evidence of compliance with subsection (a), section four  
5 of this article;

6 (2) ~~Beginning within a ten-year period~~ one year after completing the teacher education  
7 program for which the scholarship was awarded, (A) teach full-time in the subject area of  
8 mathematics, science, or special education at the elementary, middle, or secondary level, or  
9 special education at the elementary, middle or secondary level, in a geographic area of critical  
10 need, under contract with a county board of education in a public education program in the state,  
11 for a period of not fewer than two five consecutive years for each year the four academic years  
12 for which a scholarship was received. or

13 (B) ~~Teach full time under contract for not less than one year for each year for which a~~  
14 ~~scholarship was received with a county board of education in this state in a teacher shortage area~~  
15 ~~pursuant to section one of this article, in an exceptional children program in this state, in a school~~

16 having less than average academic results or in a school in an economically disadvantaged area  
17 of this state; or

18 (C) Within the ten year period, while seeking and unable to secure a full time teaching  
19 position under contract with a county board of education which satisfies the conditions of  
20 paragraph (A) of this subdivision:

21 (i) Teach full time in a private school, parochial or other school approved for the instruction  
22 of students of compulsory school age pursuant to section one, article eight, chapter eighteen of  
23 this code; or

24 (ii) Teach in an institution of higher education in this state as defined in section two, article  
25 one, chapter eighteen b of this code or in a post secondary vocational education program in this  
26 state for a period of not fewer than two years for each year for which a scholarship was received;  
27 or

28 (iii) Perform alternative service or employment in this state pursuant to rules promulgated  
29 by the commission, in federal, state, county or local supported programs with an educational  
30 component, including mental or physical health care, or with bona fide tax exempt charitable  
31 organizations dedicated to the above, for a period of not fewer than two years for each year for  
32 which a scholarship was received. Any teaching time accrued during the required five-year period  
33 as a substitute teacher for a county board of education under paragraph (A) or (B) of this  
34 subdivision in the subject area of mathematics, science, or special education at the elementary,  
35 middle, or secondary level, or special education at the elementary, middle or secondary level,  
36 shall be credited pro rata in accordance with rules promulgated by the commission; or

37 (3) Repay all or part of an Underwood-Smith teacher scholarship Teaching Scholars  
38 award received under this article plus interest and, if applicable, reasonable collection fees in  
39 accordance with subsection (c), section four of this article, except as provided in subsection (d)  
40 of section four of this article §18C-4-4 of this code.

41 (b) Scholarship agreements shall disclose fully the terms and conditions under which

42 assistance under this article is provided and under which repayment may be required. The  
43 agreements shall include the following:

44 (1) A description of the conditions and procedures to be established under ~~section four of~~  
45 ~~this article~~ §18C-4-4 of this code; and

46 (2) A description of the appeals procedure required to be established under ~~section four~~  
47 ~~of this article~~ §18C-4-4 of this code.

48 (c) ~~Individuals who were~~ The scholarship terms, conditions, requirements, and  
49 agreements applicable to ~~awarded~~ an Underwood-Smith teacher scholarship recipient prior to the  
50 effective date of this section ~~may apply the provisions of paragraph (A), (B) or (C), subdivision~~  
51 ~~(2), subsection (a) of this section to teaching or other service performed by them after July 1, 1997~~  
52 ~~shall continue in effect and are not altered by the reenactment of this section during the 2019~~  
53 regular session of the Legislature.

#### **§18C-4-4. Renewal conditions; noncompliance; deferral; excusal.**

1 (a) The recipient of an Underwood-Smith Teacher Scholarship ~~Teaching Scholars award~~  
2 is eligible for scholarship renewal only during those periods when the recipient meets the following  
3 conditions:

4 (1) Is enrolled as a full-time student in an accredited institution of higher education in this  
5 state;

6 (2) Is pursuing a course program of study leading to teacher certification in mathematics,  
7 science, or special education at the preschool elementary, middle or secondary level; ~~in this state~~

8 (3) Is maintaining satisfactory progress as determined by the institution of higher education  
9 the recipient is attending; and

10 (4) Is maintaining a cumulative grade point average of at least 3.25 on a 4.0 scale; and

11 (5) Is complying with such other standards as the commission may establish by rule.

12 (b) Recipients found to be in noncompliance with the agreement entered into under ~~section~~  
13 ~~three of this article~~ §18C-4-3 of this code shall be required to repay the amount of the scholarship

14 awards received, plus interest, and, where applicable, reasonable collection fees, on a schedule  
15 and at a rate of interest prescribed in the program guidelines. Guidelines also shall provide for  
16 proration of the amount to be repaid by a recipient who teaches for part of the period required  
17 under subsection (a), ~~section three of this article~~ §18C-4-3 of this code and for appeal procedures  
18 under which a recipient may appeal any determination of noncompliance.

19 (c) A recipient is not in violation of the agreement entered into under ~~section three of this~~ article §18C-4-3 of this code during any period in which the recipient is meeting any of the  
20 following conditions:

22 (1) Pursuing a full-time course of study at an accredited institution of higher education;

23 (2) Serving, not in excess of four years, as a member of the armed services of the United  
24 States;

25 (3) ~~Seeking and unable to find full-time employment in accordance with paragraph (A),~~  
26 ~~subdivision (2), subsection (a), section three of this article and is fulfilling any of the alternatives~~  
27 ~~specified in paragraph (B) or (C) of that subdivision;~~

28 (4) Satisfying the provisions of ~~additional~~ any repayment exemptions that may be  
29 prescribed by the commission by rule; or

30 (5) ~~(4)~~ Failing to comply with the terms of the agreement due to death or permanent or  
31 temporary disability as established by sworn affidavit of a qualified physician.

32 (d) The rules adopted by the commission may provide guidelines under which the vice  
33 chancellor for administration may extend the time period for beginning or fulfilling the teaching  
34 obligation ~~to fifteen years~~ if extenuating circumstances exist.

#### **§18C-4-5. Amount and duration of scholarship; relation to other assistance.**

1 (a) ~~Subject to subsection (b) of this section, each recipient of An Underwood-Smith~~  
2 ~~teacher scholarship is eligible to receive assistance of up to \$5,000 for each academic year of~~  
3 ~~higher education~~ Teaching Scholars award shall be used in preparation for becoming a ~~preschool~~  
4 an elementary, middle or secondary mathematics, science, or special education teacher in the

5        public schools of this state. The annual award is equal to the lesser of the cost of tuition or \$7,800  
6        and an institution may not charge a scholar any tuition and mandatory fees above that covered  
7        by this award and other federal, state, and institutional scholarships and grants. No individual may  
8        receive scholarship assistance for more than

9                (b) An Underwood-Smith Teaching Scholars award is available for a maximum of four  
10        academic years for the completion of a bachelor's degree and two additional academic years for  
11        completion of a master's degree certification in special education that meets the requirements set  
12        by the State Board of Education.

13                (b) No individual shall

14                (c) An individual may not receive a scholarship award under this article which exceeds the  
15        cost of attendance at the institution the individual is attending. The cost of attendance shall be  
16        based upon the actual cost of tuition and fees, and reasonable allowances for books, educational  
17        supplies, room and board and other expenses necessitated by individual circumstances, in  
18        accordance with the program guidelines. For the purposes of establishing an award amount, the  
19        senior administrator vice chancellor for administration shall take into account the amount of  
20        financial aid assistance the recipient has or will receive from all other sources. If the amount of  
21        the Underwood-Smith teacher scholarship assistance Teaching Scholars award and the amount  
22        of assistance awards which the recipient has received from all other sources exceed the cost of  
23        attendance, the institution's financial aid officer, in consultation with the scholar, will determine  
24        what aid is to be reduced and shall do so in a manner to the best advantage of the scholar.

25                (d) The amendments to this article during the 2019 regular session of the Legislature shall  
26        be effective for school years beginning on or after July 1, 2019, and the provisions of this article  
27        existing immediately prior to the 2019 regular session of the Legislature remain in effect for school  
28        years beginning prior to July 1, 2019.

## **ARTICLE 4A. UNDERWOOD-SMITH TEACHER LOAN ASSISTANCE PROGRAM.**

### **§18C-4A-1. Selection criteria and procedures for loan assistance.**

(a) The Governor shall designate the Higher Education Student Financial Aid Advisory created by section five, article one of this chapter to select recipients to receive Underwood-Teacher Loan Assistance Awards.

(b) To be eligible for a loan award, a teacher shall agree to teach, or shall currently be  
ing, a subject area of critical need or in a school or geographic area of the state identified  
area of critical need. The advisory board shall make decisions regarding loan assistance  
ant to section one, article four of this chapter.

8 (c) In accordance with the rule promulgated pursuant to section one, article four of this  
9 chapter, the Vice Chancellor for Administration shall develop additional eligibility criteria and  
10 procedures for the administration of the loan program.

11 (d) The Vice Chancellor for Administration shall make available program application forms  
12 to public and private schools in the state via the website of the commission and the State  
13 Department of Education and in other locations convenient to potential applicants.

14 (e) The provisions of this section expire effective July 1, 2019.

#### **§18C-4A-2. Loan assistance agreement.**

3 (1) Provide the commission with evidence of compliance with subsection (b), section four,  
4 article four of this chapter;

(3) Acknowledge that an award is to be paid to the recipient's student loan institution, not directly to the recipient, and only after the commission determines that the recipient has complied with the terms of the agreement; and

(4) Repay all or part of an award received pursuant to this article if the award is not paid to a student loan institution or if the recipient does not comply with the other terms of the agreement.

(b) Each loan agreement shall disclose fully the terms and conditions under which an  
award may be granted pursuant to this article and under which repayment may be required. The  
agreement also is subject to and shall include the terms and conditions established by section  
four of this chapter.

(c) The provisions of this section expire effective July 1, 2019.

### §18C-4A-3. Amount and duration of loan assistance; limits.

(a) Each award recipient is eligible to receive loan assistance of up to \$3,000 annually, subject to limits set forth in subsection (b) of this section:

(1) If the recipient has taught for a full school year under contract with a county board in an area of critical need or in a school or geographic area of critical need; and

(2) If the recipient otherwise has complied with the terms of the agreement and with  
able provisions of this article and article four of this chapter, and any rules promulgated  
nt thereto.

(b) The recipient is eligible for renewal of loan assistance only during periods when the recipient is under contract with a county board to teach in a subject area of critical need or in a geographic area of critical need and complies with other criteria and conditions established by rule, except that a teacher who is teaching under a contract in a position that no longer meets the definition of critical need under rules established in accordance with section one, chapter four of this chapter is eligible for renewal of loan assistance until the teacher leaves his or her position.

(c) A recipient may not receive loan assistance pursuant to this article which accumulates

in excess of \$15,000.

(d) The provisions of this section expire effective July 1, 2019.

## CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

## ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, public charter schools electing to obtain coverage, and for employees and officers of the state Department of Corrections, written notice of coverage to insureds.

(a) In accordance with the provisions of this article, the state Board of Risk and Insurance

2 Management shall provide appropriate professional or other liability insurance for all county  
3 boards of education, teachers, supervisory and administrative staff members, service personnel,  
4 county superintendents of schools, and school board members and for all employees and officers  
5 of the state Department of Corrections-Division of Corrections and Rehabilitation: *Provided*, That  
6 the Board of Risk and Insurance Management is not required to provide insurance for every  
7 property, activity, or responsibility of county boards of education, teachers, supervisory and  
8 administrative staff members, service personnel, county superintendents of schools, and school  
9 board members, and for all employees and officers of the state Department of Corrections  
10 Division of Corrections and Rehabilitation

(b) Insurance provided by the Board of Risk and Insurance Management pursuant to the

provisions of §29-12-5a(a) of this code shall cover claims, demands, actions, suits, or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building or correctional institution if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, school board member, or employee or officer of the ~~Department of Corrections~~ Division of

17     Corrections and Rehabilitation was acting in the discharge of his or her duties, within the scope  
18     of his or her office, position or employment, under the direction of the county board of education,  
19     or Commissioner of the Division of Corrections and Rehabilitation, or in an official capacity as a  
20     county superintendent or as a school board member or as Commissioner of the Division of  
21     Corrections and Rehabilitation.

22                 (c) Insurance coverage provided by the Board of Risk and Insurance Management  
23     pursuant to §29-12-5a(a) of this code shall be in an amount to be determined by the state Board  
24     of Risk and Insurance Management, but in no event less than \$1 million for each occurrence. In  
25     addition, each county board of education shall purchase, through the Board of Risk and Insurance  
26     Management, excess coverage of at least \$5 million for each occurrence. The cost of this excess  
27     coverage will be paid by the respective county boards of education. Any insurance purchased  
28     under this section shall be obtained from a company licensed to do business in this state.

29                 (d) The insurance policy provided by the Board of Risk and Insurance Management  
30     pursuant to §29-12-5a(a) of this code shall include comprehensive coverage, personal injury  
31     coverage, malpractice coverage, corporal punishment coverage, legal liability coverage, as well  
32     as a provision for the payment of the cost of attorney's fees in connection with any claim, demand,  
33     action, suit, or judgment arising from such alleged negligence or other act resulting in bodily injury  
34     under the conditions specified in this section.

35                 (e) The county superintendent and other school personnel shall be defended by the county  
36     board or an insurer in the case of suit, unless the act or omission shall not have been within the  
37     course or scope of employment or official responsibility or was motivated by malicious or criminal  
38     intent.

39                 (f) At least annually, beginning with the 2019-2020 school year, the county board shall  
40     provide written notice of insurance coverage to each of its insureds, including teachers,  
41     supervisors, administrators, service personnel employees, county superintendent, and school  
42     board members. The notice shall identify the coverages, monetary limits of insurance, and duty

43 to defend for each occurrence as provided to insureds by the Board of Risk and Insurance  
44 Management under this section. The written notice may be sent via email, or via first-class mail  
45 to the insured's last mailing address known to the county board. The written notice shall also  
46 include contact information for the Board of Risk and Insurance Management.

47       (g) The provisions of this section apply to public charter schools that have been authorized  
48 pursuant to §18-5G-1 *et seq.* of this code and have included in their approved charter application  
49 a determination to obtain insurance coverage from the Board of Risk and Insurance Management  
50 pursuant to this section. If a public charter school elects to obtain coverage pursuant to this  
51 section:

52       (1) Any provision in this section applicable to a county board also applies to a charter  
53 school governing board;

54       (2) Any provision in this section applicable to a school board member also applies to a  
55 member of a charter school governing board; and

56       (3) Any provision of this section applicable to teachers, supervisory and administrative  
57 staff members, and service personnel employed by a county board also applies to teachers,  
58 supervisory and administrative staff members, and service personnel employed by a public  
59 charter school.